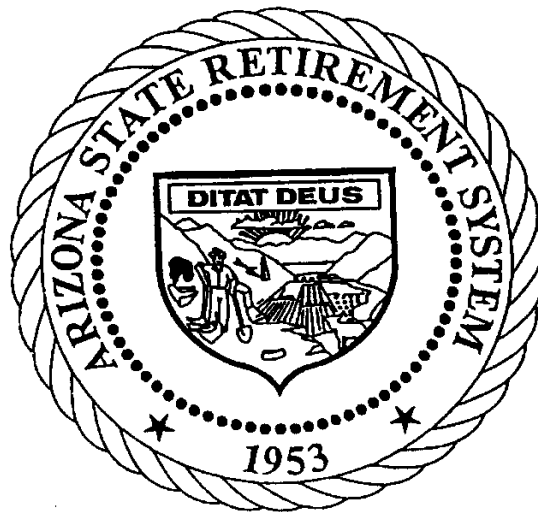


# **ARIZONA**

## **STATE RETIREMENT SYSTEM**



***REVISED STATUTES 2001***

**TITLE 38 CHAPTER 5  
ARTICLES 1, 2 AND 2.1**

Contains changes to statutes resulting from the  
First Session of the 45th Legislature

# The Arizona State Retirement System Statute Booklet

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*This booklet is a  
copy of the state statutes  
governing the laws of the  
Arizona State Retirement  
System (ASRS).*

It may be superseded by  
changes to Arizona law. Any  
discrepancies can be resolved  
by consulting the Arizona  
Revised Statutes, Title 38,  
Chapter 5, Articles 1, 2, and 2.1.

Related Statutes are  
included in this booklet for  
easier reference to laws  
concerning the health insurance  
benefit program, taxes and  
transfers from one state  
retirement system to another.

Session Laws are  
included to provide the  
reader with historical  
information about ASRS  
laws.



## ARTICLE 29

### Constitution of Arizona

Public Retirement Systems.....	2
--------------------------------	---

## ARTICLE 1

### Social Security for Public Officers and Employees

38-701.	Definitions .....	3
38-702.	Federal-State agreement .....	4
38-703.	Plans for coverage of employees of eligible political subdivisions; payroll audits.....	5
38-704	Rule making powers of state agency.....	6
38-705	Studies and reports by state agency.....	6
38-706.	Referenda and certification .....	6

## ARTICLE 2

### Arizona State Retirement System General Provisions

38-711.	Definitions .....	8
38-712.	ASRS purpose; trust fund.....	13
38-713.	ASRS Board: qualifications: term: compensation.....	14
38-714.	Powers and duties of the ASRS and Board.....	16
38-715.	Director; powers and duties.....	18
38-716.	Investment Advisory Council; terms; qualifications; compensatio20 meetings; duties .....	20
38-717.	Liability insurance and immunity for the Board .....	20
38-718.	Investment management; qualifications; terms; removal general powers and duties .....	21
38-719.	Investment of monies; limitations.....	22
38-720.	ASRS depository.....	23
38-721.	Administration account .....	24

### *Eligibility*

38-727.	Eligibility.....	25
38-728.	Elected officers of incorporated cities and towns; plan membership.....	27
38-729.	Political subdivision plans.....	27
38-730.	Charter city retirement systems; transfers .....	29

## Contributions

38-735.	Payment of contributions .....	30
38-736.	Member contributions .....	30
38-737.	Employer contributions .....	31
38-738.	Adjustment and refund.....	33
38-739.	Credited service.....	34
38-740.	Return of contributions.....	35
38-741.	Reemployment of inactive member .....	36
38-742.	Reinstatement.....	36
38-743.	Out-of-state service credit .....	37
38-744.	Leave of absence; credit for leave without pay.....	37
38-745.	Credit for military service .....	38
38-746.	Compensation limitation; adjustments.....	40
38-747.	Purchase of credited service; payment: definitions .....	41
38-748.	Employers; termination options .....	50

## Retirement Benefits

38-755.	Information as to member's status .....	51
38-756.	Outreach education program.....	51
38-757.	Normal retirement .....	52
38-758.	Early retirement .....	53
38-759.	Late retirement .....	54
38-760.	Optional forms of retirement benefits .....	54
38-761.	Level income alternative .....	56
38-762.	Survivor benefits before retirement; definition.....	56
38-763.	Survivor benefits after retirement .....	58
38-764.	Payment of retirement benefits; lump sum payments .....	58
38-765.	Errors; benefit recomputation.....	60
38-766.	Retired members; return to work .....	60
38-766.01.	Retired teachers; return to work.....	61
38-767.	Benefit increases .....	62
38-768.	Minimum retirement benefits.....	65
38-769.	Maximum retirement benefits: termination: definitions .....	67
38-770.	Eligible rollover distribution; definitions .....	73
38-771.	Benefit options for transferred defined contribution program Members; definitions.....	75
38-771.01.	Alternative benefits for transferred deferred contribution Program members; definitions .....	78
38-772.	Prior service under defined contribution program administered by the ASRS; definitions .....	87

38-773.	Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions .....	88
38-774.	Excess benefit arrangement.....	90

## **Other Benefits**

38-781.	Long-term disability program; benefits.....	91
38-782.	Group health and accident coverage for retired public employees elected officials and their dependents .....	94
38-783.	Retired members; dependents; health insurance; premium payment; separate account; definitions .....	97

## **Miscellaneous**

38-791.	Assurance and liabilities.....	100
38-792.	Exemptions from execution, attachment and taxation; exception.....	101
38-793.	Violation; classification.....	102
38-794.	Reservation to legislature.....	102

# **ARTICLE 2.1**

## **Long Term Disability Program**

38-797.	Definitions .....	103
38-797.01.	LTD Program.....	105
38-797.02.	LTD trust fund.....	105
38-797.03.	ASRS board; personnel; duties .....	105
38-797.04.	Eligibility.....	105
38-797.05.	Employer and member contributions .....	106
38-797.06.	Contribution rate; annual report .....	107
38-797.07.	LTD program benefits; limitations.....	107
38-797.08.	Errors; benefit recomputation.....	110
38-797.09.	Facility of payment.....	111
38-797.10.	Assurances and liabilities.....	111
38-797.11.	Exemptions from execution, attachment and Taxation; exception.....	112
38-797.12.	Violation; classification.....	112
38-797.13.	Reservation to legislature.....	112

38-797.14.	Liquidation of LTD program.....	113
------------	---------------------------------	-----

## ARTICLE 8

### Supplemental DC Plans

38-951.	Definitions .....	114
38-952.	Supplemental dc plans; establishment; administration.....	114
38-953.	Supplemental option.....	116
38-954.	Vesting.....	117

### Related Statutes

11-1437.	Transfer of county employees.....	118
15-187.	Charter schools; teachers; employment benefits.....	118
15-1444.	Powers and duties.....	119
15-1451.	Optional retirement plans.....	121
15-1628.	Powers and procedures pertaining to optional Retirement programs.....	124
38-615.	Payment for accumulated sick leave; limit; definition.....	127
38-616.	Retiree accumulated sick leave fund; administration; contribution.....	129
38-651.01.	Group health and accident coverage for retired public Employees and elected officials and their dependents.....	130
38-651.03	Expenditure of funds for disability income insurance .....	133
38-817.	Group health and accident coverage for retired members; payment.....	133
38-817.01.	Group health and accident coverage for retired members; payment; definition.....	135
38-855.	Transfer outside the public safety personnel retirement system.....	137
38-857.	Group health and accident coverage for retired members; payment.....	137
38-857.01.	Group health and accident coverage for retired members; payment definition.....	138
38-906.	Group health and accident coverage for retired members; payment.....	140
38-906.01.	Group health and accident coverage for retired members; payment; definition.....	141
38-921.	Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state.....	143
38-922.	Transfer or redemption of service credits .....	144
41-3006.08.	Arizona state retirement system; termination July 1, 2006.....	146
42-271.	Property subject tax.....	146
42-11102.	Exemption for government property; application of procedural provisions .....	150
43-1022.	Subtractions from Arizona gross income.....	152

## Session Laws

Laws of 1976, Chapter 99 .....	156
Laws of 1978, Chapter 53 .....	158
Laws of 1979, Chapter 91 .....	160
Laws of 1980, Chapter 180 .....	162
Laws of 1980, Chapter 238 .....	162
Laws of 1981, Chapter 53 .....	164
Laws of 1981, Chapter 284 .....	164
Laws of 1981, Chapter 310 .....	165
Laws of 1982, Chapter 222 .....	167
Laws of 1982, Chapter 223 .....	167
Laws of 1982, Chapter 226 .....	168
Laws of 1983, Chapter 293 .....	170
Laws of 1984, Chapter 12 .....	171
Laws of 1984, Chapter 397 .....	171
Laws of 1985, Chapter 270 .....	172
Laws of 1986, Chapter 13 .....	173
Laws of 1986, Chapter 77 .....	173
Laws of 1986, Chapter 88 .....	174
Laws of 1986, Chapter 287 .....	174
Laws of 1986, Chapter 325 .....	175
Laws of 1987, Chapter 274 .....	176
Laws of 1987, Chapter 281 .....	176
Laws of 1987, Chapter 319 .....	177
Laws of 1989, Chapter 219 .....	180
Laws of 1989, Chapter 310 .....	180
Laws of 1990, Chapter 68 .....	187
Laws of 1990, Chapter 183 .....	187
Laws of 1990, Chapter 194 .....	188
Laws of 1990, Chapter 217 .....	188
Laws of 1991, Chapter 129 .....	189
Laws of 1992, Chapter 27 .....	190
Laws of 1992, Chapter 137 .....	190
Laws of 1992, Chapter 309 .....	191
Laws of 1992, Chapter 339 .....	192
Laws of 1995, Chapter 32 .....	194
Laws of 1995, Chapter 134 .....	196
Laws of 1995, Chapter 205 .....	198
Laws of 1997, Chapter 143 .....	201
Laws of 1997, Chapter 203 .....	201
Laws of 1997, Chapter 280 .....	203
Laws of 1998, Chapter 264 .....	205

Laws of 1999, Chapter 66 .....	206
Laws of 1999, Chapter 260 .....	209
Laws of 1999, Chapter 266 .....	209
 Laws of 1999, Chapter 327 .....	 213
Laws of 1999, Chapter 329 .....	215
Laws of 2000, Chapter 341 .....	216
Laws of 2001, Chapter 280 .....	218
Laws of 2001, Chapter 376 .....	218
Laws of 2001, Chapter 380 .....	219
Laws of 2001, Chapter 383 .....	220





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# CONSTITUTION OF ARIZONA

## ARTICLE 29

### Section 1. Public retirement systems

A. Public retirement systems shall be funded with contributions and investment earnings using actuarial methods and assumptions that are consistent with generally accepted actuarial standards.

B. The assets of public retirement systems, including investment earnings and contributions, are separate and independent trust funds and shall be invested, administered and distributed as determined by law solely in the interests of the members and beneficiaries of the public retirement systems.

C. Membership in a public retirement system is a contractual relationship that is subject to article II, section 25, and public retirement system benefits shall not be diminished or impaired.

*As amended by the passage of Proposition 100 (SCR 1009) in the general election of 1998.*



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## ARTICLE 1

### Social Security for Public Officers and Employees

#### 38-701. Definitions

In this article, unless the context otherwise requires:

1. **"Commissioner of social security"** includes any individual to whom the commissioner of social security has delegated any of the commissioner's functions under the social security act with respect to coverage under the act of employees of states and their political subdivisions.

2. **"Employee"** means any person in the employ of this state or a political subdivision of this state and includes an elective or appointive officer of this state or an eligible political subdivision of this state.

3. **"Employment"** means any service performed by an employee in the employ of this state or a political subdivision of this state, for the employer, except service that in the absence of an agreement entered into under this article would constitute "employment" as defined in the social security act, or service that under the social security act may not be included in an agreement between this state and the commissioner of social security entered into under this article.

4. **"Political subdivision"** includes counties, incorporated cities or towns and school districts in this state, and any other political subdivision as defined in article XIII, section 7, Constitution of Arizona.

5. **"Social security act"** means the federal social security act (42 United States Code chapter 7), including regulations and requirements issued pursuant to that act.

6. **"State agency"** means the Arizona State Retirement System board established pursuant to section 38-713.

*Originally A.R.S. §38-701 as added by Laws 1951, Ch. 126, §2. Repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1995, Ch. 32, §14, eff. March 30, 1995.*



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### **38-702. Federal-state agreement**

A. On behalf of this state the governor may enter into an agreement with the commissioner of social security, consistent with this article, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of this state or any political subdivision of this state with respect to services that are specified in the agreement and that constitute employment.

B. The agreement may contain provisions relating to coverage, benefits, contributions, effective date, modification of the agreement, notification of dissolution of entities, administration and other appropriate provisions to which the state agency and commissioner of social security agree, except that the agreement shall provide in effect the following, unless otherwise required under the social security act:

1. Benefits shall be provided for employees whose services are covered by the agreement, and their dependents and survivors, on the same basis as though the services constituted employment within the meaning of title II of the social security act.

2. The agreement is effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but in no event may it be effective with respect to services performed before the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to the services is entered into, but an agreement or modification of an agreement entered into within the period permitted for retroactive coverage of employees under the agreement by title II of the social security act may provide in the agreement or modification of the agreement that the agreement or modification of the agreement is effective with respect to services performed after January 1, 1951, or any date after that date.

3. All services that constitute employment and that are performed in the employ of this state by employees of this state are covered by the agreement.

4. All services that constitute employment performed in the employ of an eligible political subdivision of this state and that are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the state agency under section 38-703 are covered by the agreement.

5. All services described in either paragraph 3 or 4 and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the commissioner of social security pursuant to section 38-706.



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*Original versions, as added by Laws 1951, Ch. 126, §3, was repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1995, h. 32, §14, eff. March 30, 1995. As amended by Laws 2001 Ch. 136, §2 (SB 1117).*

**38-703. Plans for coverage of employees of eligible political subdivisions; payroll audits**

A. Each eligible political subdivision of this state may submit for approval by the state agency a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of the social security act, to employees of the eligible political subdivisions. The state agency shall approve each plan and any amendment of the plan if it finds that the plan or amendment of the plan is in conformity with requirements provided in rules of the state agency, except that a plan shall not be approved unless:

1. It is in conformity with the requirements of the social security act and with the agreement entered into under section 38-702.

2. It provides that all services that constitute employment and that are performed in the employ of the eligible political subdivision by employees of the political subdivision are covered by the plan.

3. It provides for such methods of administration of the plan by the eligible political subdivisions that the state agency finds to be necessary for the proper and efficient administration of the plan.

4. It provides that the eligible political subdivision make reports, in the form and containing the information, the state agency from time to time requires, and comply with provisions the state agency or the commissioner of social security from time to time finds necessary to assure the correctness and verification of the reports.

B. The state agency shall not finally refuse to approve a plan submitted by an eligible political subdivision under subsection A of this section without reasonable notice and the opportunity for a hearing to the political subdivision affected by the refusal.

*The original version, as added by Laws 1951, Ch. 126, §5, was repealed by Laws 1992, Ch. 320, §1. The current version was added by Laws 1995, Ch. 32, §14, eff. March 30, 1995.*



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**38-704. Rule making powers of state agency**

The state agency shall adopt rules that are not inconsistent with this article and that it finds necessary or appropriate for the efficient administration of the functions with which it is charged under this article.

*The original version, as added by Laws 1951, Ch. 126, §7, was repealed by Laws 1995, Ch. 32, §13. The original version was added by Laws 1995, h. 32, §14, eff. March 30, 1995.*

**38-705. Studies and reports by state agency**

The state agency may:

1. Conduct studies concerning the problem of old age and survivors insurance protection for employees and concerning the operation of agreements made and plans approved under this article.

2. Submit a report to the legislature at the beginning of each regular session covering the administration and operation of this article during the preceding calendar year, including recommendations for amendments to this article it considers proper.

*The original version, as added by Laws 1951, Ch. 126, §8, was repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1995, Ch. 32, §14, eff. March 30, 1995. As amended by Laws 1996, Ch. 185, §2, Eff. July 20, 1996*

**38-706. Referenda and certification**

- A. On request of the board of trustees of a retirement system established by this state, the governor may authorize a referendum. On request of the governing body of any political subdivision that has established a retirement system, the governor shall authorize a referendum.

- B. The referendum shall be conducted and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, on the question of whether service in positions covered by the retirement system should be excluded from or included under an agreement under this article. The notice of referendum required by section 218(d)(3)(c) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in the form and detail deemed necessary and sufficient by the agency or individual designated to supervise the referendum, to inform the employees of the rights that will accrue to them and their dependents and survivors, and the



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liabilities to which they will be subject, if their services are included under an agreement under this article.

C. On receipt of evidence satisfactory to the governor that with respect to any referendum the conditions specified in section 218(d)(3) of the social security act have been met, the governor shall so certify to the commissioner of social security.

*As added by Laws 2001 Chapter 136, §3 (SB 1117).*



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## ARTICLE 2

### Arizona State Retirement System General Provisions

#### 38-711. Definitions

In this article, unless the context otherwise requires:

1. **"Active member"** means a member as defined in paragraph 22, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. **"Actuarial equivalent"** means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. **"ASRS"** means the Arizona State Retirement System established by this article.

4. **"Assets"** means the resources of ASRS including all cash, investments or securities.

5. **"Average monthly compensation"** means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked.

(b) Effective July 1, 1985, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any



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month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked. This subdivision applies only to members whose membership in ASRS was effective after December 31, 1983 or who agree in writing as a binding condition of eligibility for being granted the benefit advantages available under this subdivision to have their benefit computed on the basis of the definition of compensation.

6. **"Board"** means the ASRS board established in section 38-713.

7. **"Compensation"** means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer. Compensation, as provided in paragraph 5, subdivision (b) of this section, does not include:

(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.





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8. "**Contingent annuitant**" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "**Credited service**" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "**Early retirement**" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

11. "**Effective date**" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

12. "**Employer**" means:

(a) This state.

(b) Participating political subdivisions.

13. "**Employer contributions**" means all amounts paid into ASRS by an employer on behalf of a member.

14. "**Fiscal year**" means the period from July 1 of any year to June 30 of the following year.

15. "**Inactive member**" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

16. "**Interest**" means the assumed actuarial investment earnings rate approved by the board.



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17. "**Internal revenue code**" means the United States internal revenue code of 1986, as amended.

18. "**Investment management**" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

19. "**Late retirement**" means retirement after normal retirement.

20. "**Leave of absence**" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

21. "**Life annuity**" means equal monthly installments payable during the member's lifetime after retirement.

22. "**Member**":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of the ASRS and who has not withdrawn contributions from the ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual whom:

(i) Is not otherwise an employee of an employer.



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(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

23. "**Member contributions**" means all amounts paid to ASRS by a member.

24. "**Normal costs**" means costs of ASRS as computed under the projected unit credit method of actuarial computation that would have arisen if the benefits in effect at the time of the computation had always been in effect from the time of earliest eligibility of the current members.

25. "**Normal retirement age**" means the age at which a member reaches the member's normal retirement date.

26. "**Normal retirement date**" means the earliest of the following:

(a) A member's sixty-fifth birthday.

(b) A member's sixty-second birthday and completion of at least ten years of credited service.

(c) The first day that the sum of a member's age and years of total credited service equals eighty.

27. "**Political subdivision**" means any political subdivision of this state.

28. "**Retired member**" means a member who is receiving retirement benefits pursuant to this article.

29. "**Service year**" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.



(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

30. **"State"** means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

31. **"Vested"** means that a member is eligible to receive a future retirement benefit.

*As added by Laws 1953, Ch. 128, §3. As amended by Laws 1954, Ch. 116, §1; Laws 1957, Ch. 96, §1; Laws 1965, Ch. 87, §1; Laws 1970, Ch. 134, §2, and Ch. 136, §2; Laws 1972, Ch. 51, §14; Laws 1974, h. 120, §§1, 6; Laws 1975, Ch. 53, §§1, 2; Laws 1978, Ch. 54, §1; Laws 1979, Ch. 221, §2; Laws 1981, Ch. 284, §2; Laws 1983, Ch. 293, §1; Laws 1985, Ch. 196, §1, and Ch. 294, §§1,3; Laws 1986, Ch. 285, §1; Laws 1987, Ch. 274, §1; Laws 1989, Ch. 310, §2; Laws 1990, Ch. 145, §1, and Ch. 396, §1; Laws 1991, Ch. 170, §1, and Ch. 270, §4; Laws 1992, Ch. 319, §32, and Ch. 320, §5; Laws 1994, Ch. 356, §8; Laws 1995, Ch. 32, §14; Laws 1996, Ch. 185, §3; Laws 1997, Ch. 280, §1; Laws 1998, Ch. 155, §1; Laws 1999, Ch. 327 (SB 1083), §2; Laws 2000, Ch. 132, §1; Laws 2001 Ch. 136, §4 (SB 1117).*

### **38-712. ASRS purpose; trust fund**

A. The primary intent of ASRS is to:

1. Provide an incentive in the recruitment and retention of employees of the highest possible quality.

2. Contribute toward providing a total compensation package that is generally equivalent to comparable employment in other public and private organizations in this state.

3. Provide a retirement system that encourages employees to remain in service for periods of time that will provide public employers with the full benefit of the training and experience gained by the employees.

4. Provide an orderly method of promoting and maintaining a high level of service to the public through an equitable separation procedure that is available to employees at retirement or on becoming disabled.

5. Provide a base retirement benefit that is less than one hundred per cent of a member's post-retirement income requirements, recognizing that personal savings and social security also contribute toward total post-retirement income requirements.



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B. ASRS is a defined benefit plan as described in section 414(j) of the internal revenue code. As provided in section 38-771, some eligible members of ASRS are entitled to benefits under the defined contribution program administered by ASRS. With respect to the portion of ASRS that provides benefits to members entitled to benefits under the defined contribution program that are derived from employer contributions and that are based partly on the balance of the separate account of a member, ASRS is a plan described in section 414(k) of the internal revenue code and shall comply with all applicable provisions of section 414(k) of the internal revenue code.

C. A public employee's retirement trust fund is established to afford an optimum degree of security to the members of ASRS. All monies and other assets of ASRS are a part of the trust fund. All accounts, depositories and funds of ASRS are included within the trust fund.

D. Except as provided in section 38-738, an employer does not have a beneficial interest in any asset of the trust fund, and no part of the trust fund may ever revert to or be paid, directly or indirectly, to an employer. All liabilities with respect to members and their beneficiaries shall be satisfied before any part of the corpus or income of the trust fund is used for or diverted to purposes other than for the exclusive benefit of members or their beneficiaries.

*As added by Laws 1995, Ch. 32, §14, eff. March 30, 1995. As amended by Laws 1997, Ch. 280, §2, Eff. July 21, 1997.*

### **38-713. ASRS board; qualifications; term; compensation**

A. The ASRS board is established consisting of the following nine members appointed by the governor pursuant to section 38-211:

1. Five members from among the members of ASRS to represent the members of ASRS as follows:

- (a) An educator.
- (b) An employee of a political subdivision.
- (c) A retired member.
- (d) An employee of this state.
- (e) An at large member who may represent any ASRS member group.



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2. Four members who are not members of ASRS to represent the public.

B. Four of the members shall have at least ten years' substantial experience as any one or a combination of the following:

1. A portfolio manager acting in a fiduciary capacity.

2. A securities analyst.

3. An employee or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment related capacity.

4. A chartered financial analyst in good standing.

5. A professor at the university level teaching economics or investment related subjects.

6. An economist.

7. Any other professional engaged in the field of public or private finances.

C. Each member who represents an ASRS member group shall have not less than five years of administrative management experience.

D. The following persons are not eligible for membership on the board:

1. A person who is a stockbroker or bond broker and who is actively engaged in the profession of a stockbroker or bond broker.

2. A person who holds a real estate license pursuant to title 32, chapter 20.

E. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

F. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars a day, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.



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*As added by Laws 1953, Ch. 128, §5. As amended by Laws 1954, Ch. 116, §8; Laws 1955, Ch. 104, §2; Laws 1970, Ch. 136, §3, and Ch. 204, §145; Laws 1971, Ch. 90, §2; Laws 1972, Ch. 163, §39; Laws 1974, Ch. 180, §1; Laws 1975, Ch. 158, §1; Laws 1987, Ch. 75, §1; Laws 1994, Ch. 101, §1; Laws 1995, Ch. 32, §14, and Ch. 134, §2, eff. April 17, 1995; Laws 1997, Ch. 143, §1.*

**38-714. Powers and duties of ASRS and board**

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS, except the investment powers and duties of investment management.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall:

1. Prescribe investment goals, objectives and policies that are consistent with the purposes of this article and the limitations and standard of care prescribed in section 38-719, subsection B.

2. Allocate assets to meet the investment goals, objectives and policies it prescribes.

3. Adopt specific policy directives for the guidance of investment management.

4. Meet with each investment manager at least annually or at the request of a board member to review the investment manager's performance and the investment manager's attainment of and adherence to the board's investment goals, objectives and policies.

E. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

F. The board may:



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1. Determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination a hearing on the determination.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Assign, transfer and deliver all stocks, bonds and other investments owned by ASRS if it is not inconsistent with or does not in any way contravene the authority of investment management for investing, reinvesting, purchasing and selling stocks, bonds and other investments.

4. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

5. Adopt, amend or repeal rules for the administration of this article.

6. Prescribe investment diversification programs and assign investment management responsibilities regarding those programs as it deems appropriate to achieve its investment goals, objectives and policies.

G. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

H. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months of the close of the applicable fiscal year and shall be submitted to the governor and the legislature.





3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

I. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

*As added by Laws 1953, Ch. 128, §15. As amended by Laws 1954, Ch. 116, §8; Laws 1955, Ch. 104, §2; Laws 1975, Ch. 53, §4; Laws 1979, Ch. 220, §1; Laws 1982, Ch. 141, §2; Laws 1991, Ch. 270, §1; Laws 1992, Ch. 53, §1; Laws 1994, Ch. 101, §2, and Ch. 356, §4; Laws 1995, Ch. 32, §14, eff. March 30, 1995; Laws 1997, Ch. 143, §2, Ch. 221, §179, and Ch. 280, §3; Laws 1999, Ch. 327, §3. (SB 1083).*

**38-715. Director; powers and duties**

A. The board shall appoint a director. The term of the director is one year and expires on June 30. On expiration of a director's term, the board may reappoint the director for another term. The board may remove the director at any time for cause.

B. The director shall appoint a deputy director and assistant directors with the approval of the board.

C. The director, under the supervision of the board, shall:

1. Administer this article, except the investment powers and duties of investment management.

2. Hire employees and services the director deems necessary and prescribe their duties.

3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.

4. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) The investment of temporary surplus monies only in obligations of the United States government or agencies whose obligations are guaranteed by the United States government, commercial paper or banker's acceptances for a term of not more than fifteen days.



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(d) Providing continuing education programs for the board to keep the board members informed of current issues and information needed to carry out their duties.

5. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Invest marketable securities owned by ASRS by entering into security loan agreements with one or more security lending entities. For the purpose of this paragraph:

(a) "**Marketable securities**" means securities that are freely and regularly traded on recognized exchanges or marketplaces.

(b) "**Security loan agreement**" means a written contract under which ASRS, as lender, agrees to lend specific marketable securities for a period of not more than one year. ASRS, under a security loan agreement, shall retain the right to collect from the borrower all dividends, interest, premiums and rights and any other distributions to which ASRS otherwise would have been entitled. During the term of a security loan agreement ASRS shall waive the right to vote the securities that are the subject of the agreement. A security loan agreement shall provide for termination by either party on terms mutually acceptable to the parties. The borrower shall deliver collateral to ASRS or its designated representative. At all times during the term of any security loan agreement the collateral shall be in an amount equal to at least one hundred per cent of the market value of the loaned securities. A security loan agreement shall provide for payment of additional collateral on a daily basis, or at such other less frequent intervals as the value of the loaned securities increases. A security loan agreement with a security lending entity shall contain the terms and conditions of the fees to be paid to a security lending entity for servicing the security loan agreement. ASRS shall pay the fees approved by the board to the security lending entity for servicing a security loan agreement from the revenues of the security lending program.

4. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph.



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Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means an account to which contributions have not been paid for six months or more.

5. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if the member was unable to apply before the retroactive effective date through no fault of the member.

E. The director, under supervision of the governing committee for tax deferred annuity and deferred compensation plans, may hire and supervise employees and obtain services the director deems necessary to administer article 5 of this chapter. The tax deferred annuity and deferred compensation programs established pursuant to article 5 of this chapter shall bear the costs for these employees and services.

F. The director and all persons employed by the director shall be compensated as determined pursuant to section 38-611.

*Originally A.R.S. §38-743.01. As amended by Laws 1975, Ch. 53, §4; Laws 1977, Ch. 140, §4; Laws 1985, Ch. 48, §1, and Ch. 294, §2; Laws 1994, Ch. 101, §3, and Ch. 356, §5; Laws 1995, Ch. 134, §3, and Ch. 32, §14, eff. March 30, 1995; Laws 1996 Ch. 183, §3; Laws 1997, Ch. 280, §4.*

**38-716. Investment advisory council; terms; qualifications; compensation; meetings; duties**

*Repealed by Laws of 1997, Ch. 143, §4, eff. July 21, 1997.*

**38-717. Liability insurance and immunity for the board**

A. The department of administration shall provide coverage pursuant to title 41, chapter 3.1, article 1 against all liability for acts or omissions of any nature by members of the board while acting in an authorized governmental or proprietary capacity and within the course and scope of their employment or authority.

B. Notwithstanding any other law, a member of the board is immune from civil liability and is not subject to suit directly or by way of contribution for any act or omission resulting in any damage or injury if the member was acting in good faith and within the scope of the member's official capacity, unless the damage or injury was caused by wilful and wanton or grossly negligent conduct of the member. For the purposes of this subsection, "official capacity" means any decision or act taken by a member of the board to further the purpose for which the board is established.



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*Added by Laws 1995, Ch. 32, §14, eff. March 30, 1995. As amended by Laws 1997, Ch. 143, §5.*

**38-718. Investment management; qualifications; term; removal; general powers and duties**

A. The board shall appoint investment management. Investment management shall have:

1. The highest professional and fiduciary recommendations.
2. Not less than five years' experience at handling investments of not less than ten percent of the total assets of ASRS per year.
3. Had responsibility for investment decision making as an insurance company investment fund, an investment division of a bank, a mutual fund, an investment organization, a pension fund or an investment adviser designated as a chartered financial analyst by the institute of chartered financial analysts.

B. A bank serving as investment management does not have a conflict of interest because it is also a depository in which ASRS monies are deposited.

C. The board shall appoint the investment management for a term of one year and may appoint the investment management to succeeding terms. The board may remove investment management for not complying with this article or for failure to comply with or adhere to the board's investment goals, objectives or policies.

D. Investment management:

1. Has the sole authority to invest and reinvest in the name of ASRS all ASRS monies assigned to investment management and shall purchase and sell in the name of ASRS any of the securities and investments held by ASRS under this article.
2. Is responsible for making and executing all investment decisions.
3. Shall be multiple.

E. Investment management shall not directly or indirectly:

1. Have an interest in making an investment or purchasing annuities from a private insurer or in the gains or profits accruing from an investment or annuities.



2. As investment management or as agent or partner of others borrow monies, funds or deposits of ASRS or use monies, funds or deposits in any manner except as directed under this article.

3. Be an endorser, surety or obligor on investments made under this article:

F. Subject to the limitations in section 38-719, the board may authorize the director to make investments that are designated by the board and that do not exceed fifty percent of the assets of the investment account measured at cost.

G. For the purpose of exercising the investment responsibilities prescribed in this section, the board may enter into contracts to receive market data and other market information from securities, commodities, options and monetary exchanges. These contracts may be interpreted enforced under the laws of a jurisdiction other than this state and are not subject to section 35-214 or 38-511 or title 41, chapter 23.

*As amended by Laws 1997, Ch. 143, §6, eff. December 13, 1997, and Ch. 280, §5, eff. July 21, 1997; Laws 1999, Ch. 327, § 4. (SB 1083), eff. August 6, 1999.*

### **38-719. Investment of monies; limitations**

A. Investment management may invest and reinvest the monies in its accounts and may hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of its account monies are invested. Investment management shall redeposit the proceeds of sales, maturities and calls in the ASRS depository.

B. Investment management shall discharge the duties of the position with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with the same matters would use in the conduct of an enterprise of a like character and with like aims as that of ASRS, except that:

1. No more than eighty per cent of ASRS assets may be invested at any given time in corporate stocks or equity equivalents, based on cost value of the stocks or equity equivalents irrespective of capital appreciation.

2. No more than five per cent of ASRS assets may be invested in securities issued by any one institution, agency or corporation, other than securities issued as direct obligations of or fully guaranteed by the United States government or mortgages backed securities and agency debentures issued by federal agencies.



3. No more than five per cent of the voting stock of any one corporation may be owned.

4. No more than twenty per cent of ASRS assets may be invested in foreign equity securities and those investments shall be made only by investment managers with demonstrated expertise in those investments.

5. No more than ten per cent of ASRS assets may be invested in bonds or other evidences of indebtedness of those multinational development banks in which the United States is a member nation, including the international bank for reconstruction and development, the African development bank, the Asian development bank and the Inter-American development bank.

6. No more than one per cent of ASRS assets may be invested in economic development projects authorized as eligible for investment by the department of commerce.

C. Notwithstanding any other law, investment management shall not be required to invest in any type of investment that is dictated or required by any entity of the federal government and that is intended to fund economic development projects, public works or social programs but may consider such economically targeted investments pursuant to its fiduciary responsibility.

*As added by Laws 1953, Ch. 128, §6. As amended by Laws 1954, Ch. 116, § 9; Laws 1955, Ch. 104, § 3; Laws 1957, Ch. 96, § 3; Laws 1961, Ch. 92, § 1; Laws 1962, Ch. 44, § 1; Laws 1968, Ch. 155, § 1; Laws 1970, Ch. 134, § 2; Laws 1970, Ch. 136, § 16; Laws 1972, Ch. 118, § 8; Laws 1974, Ch. 170, § 1; Laws 1975, Ch. 37, § 8; Laws 1975, Ch. 158, §5; Laws 1976, Ch. 178, §1; Laws 1979, Ch. 104, second §§ 2, 4; Laws 1980, Ch. 42, § 1; Laws 1985, Ch. 257, § 3; Laws 1986, Ch. 341, § 1; Laws 1989, Ch. 203, § 10; Laws 1992, Ch. 325, §1; Laws 1994, Ch. 101, § 6; Laws 1995, Ch. 32, §14, Ch. 80, §1, and Ch. 223, §1; Laws 1997, Ch. 280, §6; Laws 2001, Ch. 136, §5 (SB 1117).*

### **38-720. ASRS depository**

A. Exclusively for the purposes of this article, the board shall establish an ASRS depository that is separate and apart from all other public monies or funds of this state. The ASRS depository shall be a bank in which ASRS monies are deposited and collateralized as provided by law. The ASRS depository consists of subsidiary accounts for administration, retirement and investment. ASRS shall place all monies that come into its custody from any source in the ASRS depository.

B. Any monies not currently needed in the administration account or the retirement account may be invested to provide the maximum income.



*As added by Laws 1953, Ch. 128, §18. As amended by Laws 1954, Ch. 116, §10; Laws 1960, Ch. 90, §1; Laws 1965, Ch. 87, §2; Laws 1996, Ch. 74, §1; Laws 1968, Ch. 192, §2; Laws 1970, Ch. 134, §2, and Ch. 136, §12; Laws 1972, Ch. 51, § 9; Laws 1995, Ch. 32, §14.*

**38-721. Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.
2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.
3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.
4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. Except as provided in subsection C of this section, expenditures from the administration account shall be made in accordance with board directives, subject to legislative appropriation.

C. Expenditures for the following are continuously appropriated and shall be paid from the administration account in the amount deemed necessary by the board:

1. Investment management fees and related consulting fees necessary to meet the board's investment objectives.
2. Rent.
3. Retiree payroll.

D. With the approval of the board, the director:



1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38-714, subsection F, paragraphs 1 and 6 and subsection H, paragraphs 2 and 3 and sections 38-755 and 38-756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38-782, the cost of continuing education programs for the board and the cost of legal counsel.

*As added by Laws 1953, Ch. 128, §21. As amended by Laws 1970, Ch. 136, §15; Laws 1987, Ch. 321, §1; Laws 1988, Ch. 277, §2; Laws 1990, Ch. 235, § 2, and Ch. 271, §1; Laws 1991, Ch. 270, §2; Laws 1992, Ch. 53, §2, and Ch. 320, §4; Laws 1994, Ch. 356, §6; Laws 1995, Ch. 32, §14, and Ch. 134, §4; Laws 1997, Ch. 143, §7; Laws 2001 Ch. 136, §6 (SB 1117).*

## **Eligibility**

### **38-727. Eligibility; options**

The following provisions apply to all employees hired on or after the effective date:

1. All employees and officers of this state and all officers and employees of political subdivisions establishing a retirement plan administered by the board pursuant to this article who as a result of state service or service for the political subdivision are included in agreements providing for their coverage under the federal old age and survivors insurance system are subject to this article, except that membership is not mandatory:

(a) On the part of any employee who is eligible and who elects to participate in the optional retirement programs established by the Arizona board of regents pursuant to the authority conferred by section 15-1628 or by a community college district board pursuant to authority conferred by section 15-1451.

(b) For a state elected official who is subject to term limits, who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A and who elects not to participate in ASRS as provided in paragraph 7 of this section.

(c) On the part of any employee or officer who is eligible to participate and who participates in the elected officials' retirement plan pursuant to article 3 of this chapter, the public safety personnel retirement system pursuant to article 4 of this chapter or the corrections officer retirement plan pursuant to article 6 of this chapter.





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2. All employees and officers of political subdivisions whose compensation is provided wholly or in part from state monies and who are declared to be state employees and officers by the legislature for retirement purposes are subject, on legislative enactment, to this article and are members of ASRS.

3. Any member whose service terminates other than by death or withdrawal from membership is deemed to be a member of ASRS until the member's death benefit is paid.

4. Employees and officers shall not become members of ASRS and, if they are members immediately before becoming employed as provided by this section, shall have their membership status suspended while they are employed by state departments paying the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund for the period or periods payment of the employer contributions is not made by or on behalf of the departments.

5. Notwithstanding other provisions of this section, a temporary employee of the legislature whose projected term of employment is for not more than six months is ineligible for membership in ASRS. If the employment continues beyond six successive months, the employee may elect to either:

(a) Receive credit for service for the first six months of employment and establish membership in ASRS as of the beginning of the current term of employment if, within forty-five days after the first six months of employment, both the employer and the employee contribute to ASRS the amount that would have been required to be contributed to ASRS during the first six months of employment as if the employee had been a member of ASRS during those six months.

(b) Establish membership in ASRS as of the day following the completion of six months of employment.

6. A person who is employed in postgraduate training in an approved medical residency training program of an employer is ineligible for membership in ASRS.

7. A state elected official who is subject to term limits and who is eligible for participation in ASRS because the state elected official elected not to participate in the elected officials' retirement plan as provided in section 38-804, subsection A may elect not to participate in ASRS. The election not to participate is specific for that term of office. The state elected official who is subject to term limits shall make the election in writing and file the election with ASRS within thirty days after the elected official's retirement plan mails the notice to the state elected official of the state elected official's eligibility to participate in ASRS. The election is effective on the first day of the state elected official's eligibility. If a state elected official who is



subject to term limits fails to make an election as provided in this paragraph, the state elected official is deemed to have elected to participate in ASRS. The election not to participate in ASRS is irrevocable and constitutes a waiver of all benefits provided by ASRS for the state elected official's entire term, except for any benefits accrued by the state elected official in ASRS for periods of participation prior to being elected to an office subject to term limits or any benefits expressly provided by law.

*As added by Laws 1953, Ch. 128, §4. As amended by Laws 1954, Ch. 116, §2; Laws 1964, Ch. 142, §1; Laws 1970, Ch. 134, §2; Laws 1974, Ch. 125, §§2, 3; Laws 1975, Ch. 44, §§3,4; Laws 1981, Ch. 1, §§13, 17; Laws 1982, Ch. 292, §15; Laws 1986, Ch. 108, §1; Laws 1990, Ch. 145, §2; Laws 1992, Ch. 320, §7; Laws 1995, Ch. 32, §14, Ch. 85, §1, and Ch. 284, §2; Laws 1996, Ch. 185, § 6; Laws 1997, Ch. 127, §1; Laws 1999, Ch. 329, §1; Laws 2001 Ch. 136, §7 (SB 1117), Ch. 280, §2 (SB 1100), and Ch. 380, §3 (SB 1295). This section has been blended, but it may not be the same as Legislative Council will blend it.*

## **38-728. Elected officers of incorporated cities and towns; plan membership**

Notwithstanding any other law, each elected officer of an incorporated city or town may elect membership under this article.

*Added by Laws 1995, Ch. 32, §14, eff. March 30, 1995.*

## **38-729. Political subdivision plans**

A. The governing body of any political subdivision may adopt, by appropriate legislation, a supplemental retirement plan for employees and officers of the political subdivision who are included within agreements entered into between the governing body and the state agency providing for the extension of federal old age and survivors insurance benefits to the officers and employees. The supplemental retirement plan shall provide the same retirement benefits and require the same obligations for entitlement as are provided for other members under this article, except that:

1. The supplemental retirement plan shall specify the date of commencement of the supplemental retirement plan as the first day of the month following board approval of the supplemental plan of the political subdivision as provided in this section.

2. Employer and employee obligations shall be paid to ASRS in accordance with that date.



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B. The governing body of the political subdivision shall submit the supplemental retirement plan to the board in the form of an agreement. The agreement shall state the terms of the supplemental retirement plan as provided in this section. The board shall either approve or disapprove the supplemental retirement plan submitted by the governing body of the political subdivision.

C. On approval, the board shall administer the supplemental plan of the political subdivision.

D. The employer's share of contributions and payments in excess of those required of the employer under section 38-737 shall be paid from monies of the political subdivision.

E. On establishment of the supplemental retirement plan the governing body of the political subdivision shall deduct member contributions in the same amounts and in the same manner as provided in this article for state employees and shall pay those contributions, together with the employer contributions for the political subdivision, to ASRS for deposit in the ASRS depository. The governing body of the political subdivision shall reimburse ASRS in a similar manner for its pro rata share of administrative costs attributable to coverage of employees of the political subdivision.

F. In addition to the employer contributions required under section 38-737, on establishment of the supplemental retirement plan the governing body of the political subdivision shall pay to ASRS the amounts, as determined by the board, required to fund additional costs of benefits attributable to service for the political subdivision before the effective date of the supplemental retirement plan. The board may authorize payments to be made at such times as the board requires and in amounts that are less than the amount required for fully funding the additional costs.

G. If the supplemental retirement plan is authorized by a political subdivision, then on or after the effective date of the supplemental retirement plan the governing body of the political subdivision and the board may sign an agreement to waive the provisions of subsection F of this section and to authorize benefits under the supplemental retirement plan only for service with the political subdivision after the effective date of the supplemental retirement plan. In lieu of waiving benefits for all service before the effective date of the supplemental retirement plan, the governing body of the political subdivision may elect to waive benefits for a portion of that service. Amendments to the agreement may increase but shall not reduce the service for which a member is entitled to benefits. The governing body of the political subdivision shall certify for each member the years of service before the effective date of the supplemental retirement plan for which the member is entitled to benefits. In addition to the employer contributions required in section 38-737, the governing body of the political subdivision shall pay to ASRS the amount, as



determined by the board, required to fund the cost of the benefits attributable to service before the effective date of the supplemental retirement plan for which members are entitled to benefits.

H. The new political subdivision shall designate the classification of employees that is eligible for membership in ASRS and shall make contributions each year as provided in this section.

I. The liability of the political subdivision providing a supplemental retirement plan within ASRS arises in consideration of the officer's or employee's retention in or entrance into service for the political subdivision.

*As added by Laws 1953, Ch. 128, §25. As amended by Laws 1954, Ch. 116, §11; Laws 1960, Ch. 123, §1; Laws 1967, Ch. 84, §4; Laws 1968, Ch. 192, §1; Laws 1970, Ch. 134, §2, and Ch. 136, §10; Laws 1972, Ch. 51, §§8, 22; Laws 1978, Ch. 209, §4; Laws 1979, Ch. 91, §§1, 2; Laws 1982, Ch. 141, §4; Laws 1995, Ch. 32, §14, eff. March 30, 1995; Laws 1996, Ch. 185, §7; Laws 2001, Ch. 136, §8 (SB 1117), Ch. 380, §4 (SB 1295), and Ch. 280, §3 (SB 1100). This section has been blended, but Legislative Council may handle it differently.*

### **38-730. Charter city retirement systems; transfers**

A. On application the retirement service credits of an employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS whose job functions are shifted by law from one employer jurisdiction to another shall be transferred to the retirement system of the new employer.

B. An employee of a charter city that is not an employer under ASRS or an employee of an employer that is an employer under ASRS who becomes employed by the other employer jurisdiction may apply to have the employee's retirement service credits transferred to the retirement system of the new employer. The retirement service credits of an employee of a charter city that is not an employer under ASRS shall not be transferred unless the governing body of that city approves the transfer. The retirement service credits of an employee of an employer that is an employer under ASRS shall not be transferred unless the board approves the transfer.

C. The retirement system that transfers the retirement service credits shall pay to the retirement system of the new employer an amount equal to the present value, as of the date of the transfer, of all benefits generated by the transferred service credits in the retirement system of the new employer as determined by the governing board of the retirement system of the new employer. The amount of any payment under this subsection shall include the accumulated retirement contributions of the employee whose retirement service credits are transferred.



D. The accumulated retirement contributions of an employee whose retirement service credits are transferred that are paid to the retirement system of the new employer shall not be withdrawn by the employee unless the employee's employment terminates.

*Originally A.R.S. §38-781.24. As amended by Laws 1984, Ch. 136, §2; Laws 1992, Ch. 320, §15; Laws 1995, Ch. 32, §14.*

## Contributions

### **38-735. Payment of contributions**

A. All amounts deducted from a member's compensation as provided in section 38-736 and employer contributions required pursuant to section 38-737 shall be paid to ASRS for deposit in the ASRS depository.

B. Each employer shall certify on each payroll the amount to be contributed and shall remit that amount to ASRS.

C. Payments made pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by ASRS. ASRS shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board from time to time for actuarial equivalency. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against a political subdivision liable for payments or, at the request of the director, may be deducted from any other monies, including excise revenue taxes, payable to the political subdivision by any department or agency of this state.

*Originally A.R.S. §38-781.14. As amended by Laws 1970, Ch. 134, §2; Laws 1978, Ch. 209, §9; Laws 1995, Ch. 32, §14; Laws 1997, Ch. 280, §7.*

### **38-736. Member contributions**

A. Member contributions are required as a condition of employment and shall be made by payroll deductions. Member contributions shall begin simultaneously with membership in ASRS. Beginning July 1, 1985, member contributions are a percentage of a member's compensation equal to the employer contribution required pursuant to section 38-737. Amounts so deducted by employers shall be deposited in the ASRS depository.



B. The employer shall pay the member contributions required of members on account of compensation earned. The paid contributions shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of the employer payment shall not be before the date ASRS has received notification from the United States internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions paid will not be included in gross income for income tax purposes until the paid contributions are distributed by refund or retirement benefit payments. The employer shall pay the member contributions from monies that are established and available in the retirement deduction account and that would otherwise have been designated as member contributions and paid to ASRS. Member contributions paid pursuant to this subsection shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the approval of the United States internal revenue service pursuant to this section.

*As added by Laws 1953, Ch. 128, §11. As amended by Laws 1954, Ch. 116, § 7; Laws 1967 Ch. 84, §2; Laws 1970, Ch. 134, §2, and Ch. 136, §7; Laws 1974, Ch. 167, §2; Laws 1975, Ch. 158, §3; Laws 1978, Ch. 209, §3; Laws 1984, 1<sup>st</sup> S.S., Ch. 12, §1; Laws 1985, Ch. 294, §4; Laws 1992, Ch. 320, §8; Laws 1995, Ch. 32, §14.*

### **38-737. Employer contributions; definition**

A. Employer contributions for the biennial period shall be a percentage of compensation of all employees of the employers, excluding the compensation of those employees who are members of the defined contribution program administered by ASRS, as determined by the ASRS actuary pursuant to this section for June 30 of the even-numbered year immediately preceding the biennial period, except that beginning with fiscal year 2001-2002 the contribution rate shall not be less than two per cent of compensation of all employees of the employers. The total employer contribution shall be determined on the projected unit credit method. Except as provided in subsection D of this section, the total employer contributions shall be equal to the employer normal cost plus the amount required to amortize the past service funding requirement over a rolling thirty-year period.

B. All contributions made by the employer and allocated to the fund established by section 38-712 are irrevocable and shall be used as benefits under this article or to pay expenses of ASRS.

C. The required employer contributions shall be determined every other year by an actuary who is selected by the board and who is a fellow of the society of actuaries. ASRS shall provide a preliminary report by November 1 and a final report by December 15 of each even-



numbered year to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the two ensuing fiscal years.

D. For the fiscal years ending June 30, 1995 through June 30, 1997 and commencing with fiscal year ending June 30, 1998 through June 30, 2013 the funding period used to determine the valuation of ASRS and employer contributions payable beginning July 1 of the following year or biennial period shall be determined by the ASRS actuary using the following schedule:

## Valuation for the Biennial period

Funding period ends		Fiscal year ending
June 30, 1995		June 30, 2005
June 30, 1996		June 30, 2007
June 30, 1999		June 30, 2009
June 30, 1998	July 1, 1999 to June 30, 2001	June 30, 2011
June 30, 2000	July 1, 2001 to June 30, 2003	June 30, 2015
June 30, 2002	July 1, 2003 to June 30, 2005	June 30, 2019
June 30, 2004	July 1, 2005 to June 30, 2007	June 30, 2023
June 30, 2006	July 1, 2007 to June 30, 2009	June 30, 2027
June 30, 2008	July 1, 2009 to June 30, 2011	June 30, 2031
June 30, 2010	July 1, 2011 to June 30, 2013	June 30, 2035
June 30, 2012	July 1, 2013 to June 30, 2015	June 30, 2039

E. If at any time between June 30, 1995 and June 30, 2013 the ASRS becomes underfunded, the funding period immediately and permanently reverts to the period provided in subsection A of this section.





F. For the purposes of this section "biennial period" means the two-year period beginning on July 1 of an odd-numbered year and ending on June 30 of the next odd-numbered year.

*Originally A.R.S. §38-781.05. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §15; Laws 1974, Ch. 167, §3; Laws 1978, Ch. 54, §2; Laws 1984, 1<sup>st</sup> S.S., Ch. 12, §2; Laws 1989, Ch. 310, §3; Laws 1992, Ch. 320, §9; Laws 1993, 2<sup>nd</sup> S.S., Ch. 3, §4; Laws 1994, Ch. 356, §9; Laws 1995, Ch. 32, §14; Laws 1997, Ch. 210, §23; Laws 1999, Ch. 327, § 5 (SB 1083).*

### **38-738. Adjustment and refund**

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall return those contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment. ASRS shall not pay an employer earnings attributable to excess contributions but shall reduce the amount returned to an employer pursuant to this section by the amount of losses attributable to the excess contributions.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. The member's payments shall be made as provided in section 38-747.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due at the interest rate assumption approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.





5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection M.

7. **“Limitation year”** has the same meaning prescribed in section 38-769.

*Originally A.R.S. §§38-750 and 38-781.19, and as added by Laws 1953, Ch. 128, §14. As amended by Laws 1970, Ch. 134, §2, and Ch. 136, §9; Laws 1994, Ch. 356, §14; Laws 1995, Ch. 32, §14; Laws 1997, Ch. 280, §8, and Ch. 210, §23; Laws 1999, Ch. 327, §5 (SB 1083); Laws 2001, Ch. 136, §9 (SB 1117).*

### **38-739. Credited service**

A. A member shall not earn more than one year of credited service in any fiscal year.

B. A member shall earn proportionate credited service for each month for which the member performs service and is compensated equal to the ratio that the month bears to the number of months in the member's service year.

C. If a member is compensated for less than a full service year, the member shall earn credited service equal to the ratio that the number of months actually compensated bears to the number of months in the full service year.

D. If a member holds two or more concurrent contracts in any fiscal year, credited service shall be determined on the basis of the terms of the contract with the longest term.

E. Members on sabbatical leave for which they are paid on a full or partial basis shall make appropriate contributions while on sabbatical leave and are considered to be employed full time.

F. The following years of service are excluded from credited service under this article:

1. Years of prior service. For the purposes of this paragraph, "prior service" has the same meaning prescribed in section 38-772.

2. Years in which the member made contributions to the defined contribution program administered by ASRS or the Arizona teachers' retirement system before membership in the defined contribution program administered by ASRS and for which those contributions were subsequently withdrawn and paid to the member.



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*As added by Laws 1995, Ch. 32, §14, eff. March 30, 1995. As amended by Laws 1999, Ch. 327, § 6 (SB 1083).*

**38-740. Return of contributions**

A. Any member who leaves employment other than by retirement or death may elect to receive a return of the contributions as follows:

1. If the member has less than five years of credited service, the member shall receive the member's contributions.

2. If a member has five or more years of credited service, the member shall receive the member's contributions and an amount equal to a percentage of the employer contributions paid on behalf of the member. The percentage of employer contributions paid on behalf of the member shall be as follows:

(a) 5.0 to 5.9 years of credited service, twenty-five per cent.

(b) 6.0 to 6.9 years of credited service, forty per cent.

(c) 7.0 to 7.9 years of credited service, fifty-five per cent.

(d) 8.0 to 8.9 years of credited service, seventy per cent.

(e) 9.0 to 9.9 years of credited service, eighty-five per cent.

(f) 10.0 or more years of credited service, one hundred per cent.

3. Interest on the returned contributions as determined by the board.

B. Withdrawal of contributions with interest constitutes a withdrawal from membership in ASRS and results in a forfeiture of all other benefits under ASRS.

C. Notwithstanding any other provision of this article, a member who has not received a return of contributions pursuant to this section may combine any two or more periods of service for purposes of determining the member's benefits.

D. If a member receives more than the amount due to a member pursuant to this section, the member shall repay the amount of the overpayment together with interest at the interest rate



earned on ASRS investments as reported on a quarterly basis, but not less than the valuation rate established by the board, from the time of overpayment to the settlement of the debt.

*As added by Laws 1953, Ch. 128, §5. As amended by Laws 1957, Ch. 96, §4; Laws 1958, Ch. 44, §1; Laws 1959, Ch. 99, §1; Laws 1965, Ch. 87, §3; Laws 1970, Ch. 136, §17; Laws 1974, Ch. 120, §2; Laws 1995, Ch. 32, §14; Laws 1999, Ch. 327, §8 (SB 1083).*

### **38-741. Reemployment of inactive member**

A. ASRS shall return to active status an inactive member who terminates employment with an employer without terminating membership in ASRS and who later is reemployed by the same or another employer.

B. On retirement, the member shall receive benefits derived from service for all employers that employed the member.

C. Retirement benefits attributable to service before membership in ASRS, if any, shall be paid only by the employer from which the retiring member obtained entitlement to the benefits as provided in section 38-729.

*As added by Laws 1953, Ch. 128, §5. As amended by Laws 1954, Ch. 116, §3; Laws 1957, Ch. 96, §§1, 4; Laws 1958, Ch. 44, §1; Laws 1959, Ch. 99, §1; Laws 1965, Ch. 87, §§1, 3; Laws 1970, Ch. 136, §§2, 17; Laws 1974, Ch. 120, §§1, 2; Laws 1975, Ch. 53, §§1, 2; Laws 1985, Ch. 294, §1; Laws 1992, Ch. 320, §3; Laws 1995, Ch. 32, §14.*

### **38-742. Reinstatement**

A. If an active member who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740, subsection A, is subsequently reemployed by an employer, the member's service shall be credited only from the date the member's most recent reemployment period commenced.

B. Notwithstanding subsection A of this section, the member may redeposit the amount of the contributions the member received at the time of the member's separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On satisfaction of this obligation, the member's service credits acquired by the previous employment shall be reinstated. If a member redeposits less than the amount required under this subsection, ASRS shall proportionately reduce the member's reinstated service credits.



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C. A member who is receiving benefits pursuant to section 38-797.07 28 and who received a return of contributions on termination of employment and by receipt of those contributions forfeited credited service earned on that employment, as provided in section 38-740. subsection a, may redeposit the amount of the contributions the member received at the time of the member's previous separation from service, with interest on that amount to the date of redeposit at the interest rate assumption approved by the board for actuarial equivalency. On redeposit of the contributions and interest, the member's service credit acquired by the previous employment shall be reinstated. If a member redeposits less than the amount required under this subsection. ASRS shall proportionately reduce the member's reinstated service credits.

*Originally A.R.S. §38-781.40. As amended by Laws 1987, Ch. 208, §1; Laws 1996, Ch. 185, §8; Laws 1995, Ch. 32, §14; Laws 1997, Ch. 280, §9; Laws 1999, Ch. 327, §9, (SB 1083); Laws 2001 Ch. 136, §10 (SB 1117).*

### **38-743. Public service credit**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 was previously employed by the United States government, a state of the United States or a political subdivision of a state of the United States. The member may receive credited service for this prior employment if the member pays into ASRS the amount prescribed in subsection B.

B. A member who elects to receive credit for service with the United States government, a state of the United States or a political subdivision of a state of the United States shall pay to ASRS the amount equal to the product of the member's current annual compensation times the normal cost rate for ASRS for the fiscal year during which the purchase of credited service is being made times the years or partial years of credited service being purchased.

C. A member who previously was a member of another public employee retirement system and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

*Originally A.R.S. §38-781.39. As amended by Laws 1987, Ch. 182, §1; Laws 1994, Ch. 356, §18; Laws 1995, Ch. 32, §14, Ch. 134, §5; Laws 1996, Ch. 185, §9; Laws 1997, Ch. 280, §9; Laws 1999, Ch. 327, §9, (SB 1083); Laws 2001, Ch. 136, §11 (SB 1117).*

### **38-744. Leave of absence; credit for leave without pay**

A. If an active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 is officially granted a leave of absence from employment without pay and



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returns to employment with the same employer, unless employment could not be resumed because of disability or nonavailability of a position, the member may elect to be credited with service for retirement purposes for not more than one year of the leave by paying to ASRS the amounts as provided in subsection B of this section, if the member has not withdrawn contributions from ASRS and the member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. A member who elects to be credited with a leave period as provided in subsection A of this section shall pay to ASRS an amount equal to the employer and member contributions for the leave period together with interest at the interest rate assumption approved by the board for actuarial equivalency, based on the salary received by the member before the leave of absence began.

C. For the purposes of subsection A of this section, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

*Originally A.R.S. §§38-746.01 and 38-781.29. As amended by Laws 1970, Ch. 134, §2; Laws 1975, Ch. 52, §§1, 2; Laws 1985, Ch. 294, §7; Laws 1992, Ch. 320, §17; Laws 1995, Ch. 32, §§14, 24, and Ch. 134, §6; Laws 1996, Ch. 185, §10; Laws 2001 Ch. 136, §12 (SB 1117).*

### **38-745. Credit for military service**

A. An active member of ASRS or a member who is receiving benefits pursuant to section 38-797.07 may purchase credited service in ASRS for active military service if:

1. The member was honorably separated from the military service.
2. The member submits a copy of the member's military service record (DD-214) or its equivalent with the member's application for military service credit.

B. The cost to purchase military service credit is an amount equal to the product of the member's current annual compensation times the normal cost rate for ASRS for the fiscal year during which the purchase of credited service is being made times the years or partial years of credited service being purchased.

C. An active member of ASRS who is called to active military service may receive credited service for not more than forty-eight months of active military service. The member's employer shall make employer contributions and member contributions for the member if the member meets the following requirements:



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1. Was an active member of ASRS on the day before the member began active military service.

2. Is a member of the Arizona National Guard or is a member of the reserves of any military establishment of the United States.

3. Volunteers or is ordered into active military service of the United States as part of a presidential call-up.

4. Is honorably separated from active military service and returns to employment for the same employer from which the member left for active military service within ninety days after the date active military service is terminated, is hospitalized as a result of military service and returns to employment for the same employer from which the member left for active military service within ninety days after release from service related hospitalization or dies as a result of the military service.

D. Contributions made pursuant to subsection C shall be for the period of time beginning on the date the member began active military service and ending on one of the following dates:

1. The date the member is separated from active military service.

2. The date the member is released from service-related hospitalization or one year after initiation of service related hospitalization, whichever date is earlier.

3. The date the member dies as a result of active military service.

E. Notwithstanding any other law, on payment of the contributions made pursuant to subsection C of this section, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than forty-eight months.

F. The employer shall make contributions pursuant to subsection C of this section based on the salary being received by the member immediately before the member volunteered or was ordered into active military service in a lump sum and without penalty when the member returns to employment or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the member's death. Death benefits shall be calculated as prescribed by law.

G. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.



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H. Notwithstanding any other law, the member is not required to reimburse the member's employer or ASRS for any contribution made pursuant to subsection C of this section.

I. In addition to, but not in duplication of, the provisions of subsection C, contributions, benefits and credited service provided pursuant to this section shall be provided in accordance with section 414(u) of the internal revenue code.

*Originally A.R.S. §§38-746 and 38-781.42, and added by laws 1953, Ch. 128, §6. As amended by Laws 1989, Ch. 310, §5; Laws 1992, Ch. 320, §19; Laws 1994, Ch. 207, §1; Laws 1995, Ch. 32, §14; Laws 1996 Ch. 185, §11; Laws 1997, Ch. 280, §10; Laws 1999, Ch. 327, §11 (SB 1083); Laws 2001 Ch. 136, §13 (SB 1117).*

### **38-746. Compensation limitation; adjustments**

A. Except as provided in subsection E, beginning on July 1, 1996, the annual compensation of each employee taken into account under ASRS for any fiscal year or for any other specified twelve consecutive month period shall not exceed one hundred fifty thousand dollars.

B. If compensation under ASRS is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. For fiscal years beginning before July 1, 1997, the annual compensation limit prescribed in this section also applies to the combined compensation of a member who is a member of the group of ten highly compensated employees, as defined in section 414(q) of the internal revenue code, and who is paid the highest compensation during the fiscal year and any family member of the member who is either the member's spouse or the member's lineal descendant and who has not attained the age of nineteen before the close of the fiscal year. If the maximum compensation is adjusted pursuant to subsection D, the adjusted limitation shall be prorated among the affected members' compensation determined pursuant to this section before application of the adjusted limitation to the other provisions of this article.

D. The board shall adjust the maximum compensation under subsection A at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code.



E. The dollar limitation prescribed in subsection A does not apply to an eligible member to the extent that the annual compensation of an eligible member taken into account by ASRS for any fiscal year or for any other specified twelve consecutive month period would be reduced below two hundred thirty-five thousand eight hundred forty dollars. This was the amount allowed to be taken into account by ASRS as of July 1, 1993. The board shall adjust this amount as of the effective date of the increase prescribed by the United States secretary of the treasury. For the purposes of this subsection, "eligible member" means a person who first became a member of ASRS before July 1, 1996.

*Originally A.R.S. §38-781.38. As amended by Laws 1985, Ch. 294, §8; Laws 1986, Ch. 168, §7; Laws 1991, Ch. 170, §8; Laws 1994, Ch. 356, §17; Laws 1995, Ch. 32, §14; Laws 1996, Ch. 185, §12; Laws 1997, Ch. 280, §11.*

### **38-747. Purchase of credited service; payment; limitations; definitions**

A. A member who purchases credited service pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

1. Make payments directly to ASRS as provided in subsection H of this section.
2. Elect to have the member's employer make payments as provided in subsection B of this section.

B. A member may elect to have the member's employer make payments for all or any portion of the amounts payable for the member's purchase of credited service pursuant to the sections prescribed in subsection A of this section through a salary reduction program in accordance with the following:

1. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The electing member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. The member shall make an election pursuant to this subsection at any time on or after the date the member elects to purchase credited service pursuant to the sections prescribed in subsection A of this section and before the member's termination of employment. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment. After a member makes an irrevocable election pursuant





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to this subsection, the member does not have the option of choosing to receive the contributed amounts directly.

3. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's purchase of credited service may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's purchase of credited service. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's purchase of credited service does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's purchase of credited service.

4. If on termination of the member's current employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection. ASRS shall not grant credited service for contributions made pursuant to this subsection until those contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any salary reduction election made pursuant to this subsection. The interest or administrative charges shall be added to the amount of contributions that is made to ASRS by the member each payroll period and that is paid by the member's employer. The interest or administrative charges shall not be treated as member contributions for any purposes under this



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article and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

C. A member who elects before July 1, 1999 to receive retirement benefits based on section 38-771, subsection C, paragraph 2 or a member who elects to make contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 shall either make the member's additional contributions required pursuant to section 38-771, subsection E or allowed pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as provided in subsection H of this section or shall elect to have the member's employer make payments for those additional contributions as provided in subsection D of this section. A member who elected to be covered or who was deemed to be covered by section 38-771 on or before December 31, 1995 or who elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 3 is deemed to have made an irrevocable election pursuant to subsection D of this section to make the member's contributions to ASRS that are required by section 38-771, subsection D or allowed by section 38-771.01, subsection F, paragraph 3.

D. Any member contributions that are required by section 38-771, subsection D or that are allowed pursuant to section 38-771.01, subsection F, paragraph 3 are deemed to be made by the member to ASRS through a salary reduction program in accordance with the following:

1. A member may make member contributions pursuant to section 38-771, subsection E or section 38-771.01, subsection F, paragraph 4 through a salary reduction program elected pursuant to this subsection. If a member makes an irrevocable election pursuant to this subsection before July 1, 1999 to have the member's employer make payments for additional contributions pursuant to section 38-771, subsection E, the election continues in effect from and after June 30, 1999 and shall not be revoked, amended or altered by any election made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant to a salary reduction program are in lieu of contributions by the electing member. The member's salary or other compensation shall be reduced by the amount paid by the employer pursuant to this subsection.

2. Before a member's termination of employment, the member may make an election pursuant to this subsection at any time after the date the member elects to receive retirement benefits based on section 38-771, subsection C, paragraph 2 but before July 1, 1999 or at any time after the member elects to make member contributions pursuant to section 38-771.01, subsection F, paragraph 4. The election shall specify the number of payroll periods that deductions will be made from the member's compensation and the dollar amount of deductions for each payroll period during the specified number of payroll periods. After an election is made



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pursuant to this subsection, the election is binding on and irrevocable for the member and the member's employer during the member's remaining period of current employment.

3. After a member makes or is deemed to have made an irrevocable election pursuant to this subsection, the member does not have the option of choosing to receive the contributed amounts directly. A member who makes an irrevocable election pursuant to this subsection to have the member's employer make payments for less than all of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4 may irrevocably elect to have the member's employer make payments for all or any portion of the remaining amounts payable for the member's additional contributions. A member who makes one or more irrevocable elections pursuant to this subsection may also make other contributions to ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to subsection H of this section to the extent of any remaining amounts payable for which the member has not made an election pursuant to this subsection. An additional election or contribution with respect to a portion of the amounts payable for the member's additional contributions pursuant to section 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an irrevocable election already made pursuant to this subsection for any other portion of the amounts payable for the member's additional contributions allowed by section 38-771.01, subsection F, paragraph 4.

4. If on termination of the member's current employment all amounts have not been paid to ASRS pursuant to the member's irrevocable election pursuant to this subsection, the member may pay ASRS, within thirty days after the member's termination of employment and subject to other limitations prescribed in this section, all or any portion of the unpaid amounts as provided in subsection H of this section. These payments do not alter, amend or revoke any irrevocable election already made pursuant to this subsection with respect to any amount to be paid by the member's employer while the member is employed by the member's employer.

5. Amounts paid by an employer pursuant to this subsection shall be treated as employer contributions for the purpose of determining tax treatment under the internal revenue code. The effective date of employer payments pursuant to this subsection shall not be before the date ASRS receives notification from the United States internal revenue service that pursuant to section 414(h)(2) of the internal revenue code the amounts paid by an employer pursuant to this subsection will not be included in the member's gross income for income tax purposes until those amounts are distributed by refund or retirement benefit payments.

6. Unless otherwise provided, member contributions paid by an employer pursuant to this subsection are treated for all other purposes under ASRS in the same manner and to the same extent as member contributions that are not paid by an employer pursuant to this subsection.

E. The following limits apply to contributions to ASRS:



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1. Except to the extent paragraphs 2 and 3 of this subsection apply to certain contributions made by a member to ASRS, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member shall not exceed the lesser of either:

(a) Thirty thousand dollars or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount prescribed by this subdivision as of the effective date of the increase announced by the United States secretary of the treasury.

(b) Twenty-five per cent of the member's compensation for the limitation year.

2. Unless paragraph 4 of this subsection applies, for plan years beginning on or after July 1, 1998, in any one limitation year, the annual additions credited to ASRS for or on behalf of a member who makes contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election has not been made pursuant to subsection B of this section shall not exceed the greater of either:

(a) The requirements of section 38-769. For the purposes of applying the limits prescribed in section 38-769 under this subdivision, the accrued benefit derived from the contributions shall be treated as an annual benefit and the reduced limit for certain early retirement in section 38-769, subsection C, paragraph 2 does not apply.

(b) Except as provided in paragraph 3 of this subsection, the requirements of paragraph 1 of this subsection. The contributions shall be treated as annual additions and any of the member's other annual additions for the limitation year shall be taken into account. For the purposes of applying the requirements of paragraph 1 of this subsection under this subdivision, the percentage of compensation limit in paragraph 1, subdivision (b) of this paragraph does not apply.

3. For plan years beginning on or after July 1, 1998, the requirements of paragraph 1 of this subsection shall not be applied to reduce the amount of credited service that may be purchased by an eligible member pursuant to section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the amount of credited service allowed to be purchased pursuant to those sections on August 5, 1997 without the application of any of the limits prescribed in this section or section 415 of the internal revenue code. For the purposes of this paragraph, "eligible member" means a person who first becomes a member of ASRS before July 1, 1999.

4. Member contributions to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-922 shall not be made by a member if recognition of that service would cause



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a member to receive a retirement benefit for the same service from ASRS and one or more other retirement plans. This paragraph does not apply to either of the following:

(a) Contributions made by an eligible member as defined in paragraph 3 of this subsection, except that any service purchase by an eligible member is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

(b) Any member contributions with respect to which an irrevocable election has been made by a member pursuant to subsection B of this section, except that the service purchase is subject to any other limitations, including limitations on duplicative service purchase, otherwise provided in this article.

F. If a member's contributions are subject to the limitations of subsection E of this section, the contributions shall be treated as being made to a separate defined contribution plan. If the member's contributions exceed the limits prescribed in subsection E of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection E of this section and the remaining amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

G. If, after the application of subsection F of this section, the annual additions on behalf of a member exceed the limitations prescribed in subsection E of this section, ASRS shall dispose of excess amounts by either of the following:

1. Returning to the member any contributions that are made by the member and that are nondeductible under the internal revenue code.

2. Holding the amounts in a suspense account established pursuant to subsection J of this section and allocating the amounts as either member or employer contributions for the benefit of the member in the next limitation year and before any further member or employer contributions are made that would constitute annual additions made to a defined contribution plan pursuant to section 415 of the internal revenue code. ASRS shall allocate contributions as prescribed in this section, and the amount allocated shall reduce the amount of the member or employer contributions for the limitation year in which the allocation is made.

H. To the extent that a payment under this subsection does not alter, amend or revoke any one or more currently effective irrevocable elections made by the member pursuant to subsection



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B or D of this section, the board may accept contributions made pursuant to section 38-771 or member contributions for the payment for credited service purchases pursuant to section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in part, by any one or a combination of the following methods:

1. In lump sum payments.

2. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code, accepting eligible rollover distributions directly from one or more retirement programs that are qualified under section 401(a) of the internal revenue code or accepting rollovers directly from a member.

3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii) of the internal revenue code, accepting from a member conduit rollover contributions that are received by the member from one or more conduit rollover individual retirement accounts previously established by the member.

4. Providing by rule that the contributions may be made in installment payments over a period of time.

I. ASRS shall not grant credited service under section 38-738, 38-742, 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of this section until the contributions are received by ASRS. ASRS may assess interest or administrative charges attributable to any installment payment made pursuant to subsection H, paragraph 4 of this section to purchase credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or 38-922. The interest or administrative charges shall be added to the amount of contributions made to ASRS by the member. The interest or administrative charges shall not be treated as member contributions for any purposes under this article, and a member or a member's beneficiary does not have a right to the return of the interest or administrative charges pursuant to any other provision of this article. Interest assessed pursuant to this subsection shall be at the rate specified by the board pursuant to section 38-711, paragraph 2.

J. ASRS shall establish a suspense account that conforms with 26 Code of Federal Regulations section 1.415-6(b)(6) regarding excess annual additions.

K. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.





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L. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

M. Annual additions on behalf of a member in any limitation year shall be the sum of:

1. The amount of the member contributions made to ASRS to purchase credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable election made pursuant to subsection B of this section is not in effect.

2. The amount of member and employer contributions made to ASRS on behalf of a member who elected or was deemed to have elected to receive retirement benefits pursuant to section 38-771 or who is entitled to benefits pursuant to section 38-771.01, except that, other than as provided in subsection N of this section, corrective contributions shall be considered annual additions for the limitation years to which the contributions relate and interest and gains shall not be considered as annual additions for the purpose of any limitation prescribed in this article or in section 415 of the internal revenue code. If the corrective contributions exceed the limit on annual additions for a limitation year prior to the limitation year in which the corrective contributions are contributed by the employer to ASRS, the retirement benefit attributable to the excess corrective contributions shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess corrective contributions to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

3. Any member or employer contributions made to ASRS or any other plan that are treated as being made to a defined contribution plan maintained by an employer of the member.

4. Any forfeitures, including any income attributable to forfeitures, allocated for or on behalf of a member of ASRS or any other plan that are treated as being allocated under a defined contribution plan maintained by an employer of the member.

N. To the extent any portion of the subject benefits, if treated as subject to the benefit limitations of section 415(b) of the internal revenue code, exceed the applicable limitation on benefits pursuant to section 38-769 for the form of distribution, a percentage of corrective contributions and interest and gains shall be treated as annual additions for the limitation year in which contributed by the employer to ASRS. This percentage of corrective contributions and interest and gains shall be equal to the percentage determined by dividing the subject benefits that exceed the limitation on benefits pursuant to section 38-769 by the subject benefits. If the corrective contributions and interest and gains that are treated as annual additions for the limitation year in which the corrective contributions and interest and gains are contributed by the employer to ASRS exceed the limit on annual additions for the limitation year, the retirement



benefit attributable to the excess shall be treated as an excess benefit and shall be payable to the member as any other excess benefit is payable pursuant to section 38-774, and the employer shall pay the excess to the separate unfunded governmental excess benefit arrangement administered by the board pursuant to section 38-774.

O. Subsection M of this section shall be construed and interpreted in accordance with 26 Code of Federal Regulations section 1.415-6 to the extent that section is applicable.

P. For the purposes of this section:

1. **"Compensation"** has the same meaning prescribed in section 38-769, except that in determining a member's compensation for purposes of calculating the limits prescribed in subsection E of this section and effective for limitation years beginning on or after July 1, 1998, compensation includes any elective deferrals as defined in section 402(g)(3) of the internal revenue code and any amount that is contributed or deferred by an employer at the election of a member and that is not includable in the gross income of the member pursuant to section 125 or 457 of the internal revenue code.

2. **"Corrective contributions"** means any contributions that are paid by an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that are attributable to employer contributions that should have been made for prior limitation years.

3. **"Defined contribution plan"** has the same meaning prescribed in section 38-769.

4. **"Interest and gains"** means employer contributions to ASRS pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are attributable to earnings and supplemental credits that would have been earned or added to a member's annuity payment.

5. **"Limitation year"** has the same meaning prescribed in section 38-769.

6. **"Subject benefits"** means the retirement benefit received by a member pursuant to section 38-771.01 minus the sum of the portion of such retirement benefit attributable to contributions made by or on behalf of the member to the defined contribution program administered by ASRS for periods before July 1, 1981 and contributions made by the member after June 30, 1981 that were not picked up as provided in section 414(h)(2) of the internal revenue code.

*Former §38-747 was repealed by Laws 1995, Ch. 32, §13, eff. March 30, 1995. The current version is added by Laws 1995, Ch. 32, §14, eff. March 30, 1995. As amended by Laws 1996, Ch. 185, §13; Laws 1997, Ch. 280, §12; Laws 1998 Ch. 155, §2; Laws 1999 Ch. 266, §1.*





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*Retroactively effective to July 1, 1999, conditioned on approval by the US. Internal revenue service; Laws 2000, Ch. 315, §1 Retroactively effective to July 1, 1999; Laws 2001 Ch. 136, §14 (SB 1117).*

**38-748. Employers; termination options**

A. To encourage active members to continue to work beyond normal retirement age, an employer may elect to offer to eligible employees who are active members of ASRS a termination option as provided in subsection b of this section.

B. An employer may enter into an agreement with an eligible active member who has attained at least a normal retirement age that provides that if the member agrees to and performs work for up to thirty-six months after the effective date of the agreement the member is eligible to receive:

1. Up to thirty-six months of credited service in ASRS for the work performed under the agreement. The agreement shall provide that the employer and the member shall not make contributions to ASRS for the period of credited service.

2. Eligibility to purchase credited service equal to the period that the member has agreed to work. This purchase shall be made without regard to previous public service, but the cost of the credited service shall be determined as provided in section 38-743, subsection B.

C. The member and employer shall make contributions as agreed between the member and employer to be paid during the term of the agreement. These contributions shall be paid into a supplemental defined contribution plan established pursuant to section 38-952 for the purpose of purchasing the additional credited service authorized by subsection B, paragraph 2 of this section.

D. A member who does not complete the terms of the agreement forfeits any credited service provided under the agreement, except that any employer or member contributions to a supplemental defined contribution plan are the property of the member or the member's estate.

E. An employer who fails to complete the terms of the agreement shall make all contributions required by the agreement to the supplemental defined contribution plan.

F. A member who enters into an agreement under this section is not eligible to purchase other credited service for other public service as provided in section 38-742, 38-743, 38-744 or 38-745.



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*As added by Laws 2001 Chapter 380, §5 (SB 1295).*

## **Retirement Benefits**

### **38-755. Information as to member's status**

Subject to rules prescribed by the board, on application of a member, the board shall furnish information concerning the member's status. In addition, the board shall annually furnish to each member an account statement showing the status of the member's account including the name of the member's beneficiary as last listed with the board. The member may change the member's beneficiary at any time pursuant to rules adopted by the board and on forms furnished by the board.

*Originally A.R.S. §38-744 and 38-781.18. As amended by Laws 1970, Ch. 134, §2, and Ch. 136, §6; Laws 1972, Ch. 51, §6, 21; Laws 1990, Ch. 271, §2; Laws 1992, Ch. 320, §14; Laws 1995, Ch. 32, §14; Laws 1995, Ch. 32, §14 Laws 1996, Ch. 185, §14.*

### **38-756. Outreach education program**

A. The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.
2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.
3. Information on how ASRS is organized.
4. Information on how the benefits of the members are funded.
5. Information on the social issues related to retirement.
6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.



7. The development of a creative promotional program using available media outlets.

C. ASRS shall present the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

*Originally A.R.S. §38-781.18. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §21; Laws 1990, Ch. 271, §2; Laws 1992, Ch.320, §14; Laws 1995, Ch. 32, §14, Ch. 134, §8, eff. April 17, 1995.*

### **38-757. Normal retirement**

A. After application on a form prescribed by the director, a member may retire on reaching the member's normal retirement date.

B. Except as provided in section 38-768 and subsection C of this section, a member who meets the requirements for retirement benefits at normal retirement shall receive a monthly life annuity that equals the result of paragraph 1 multiplied by paragraph 2 when those paragraphs are defined as follows:

1. The number of whole and fractional years of credited service times the following:

(a) Two and one-tenth 2.10 per cent if the member does not have more than 19.99 years of credited service.

(b) 2.15 per cent if the member has at least 20.00 years of credited service but not more than 24.99 years of credited service.

(c) 2.20 per cent if the member has at least 25.00 years of credited service but not more than 29.99 years of credited service.

(d) 2.30 per cent if the member has at least 30.00 years of credited service.

2. The member's average monthly compensation.

C. For a person who becomes a member on or after the effective date of this amendment to this section, the amount of a member's monthly life annuity computed pursuant to subsection B of this section shall not be more than eighty per cent of the member's average monthly compensation. This limitation does not preclude benefit increases pursuant to section 38-767.



D. Employers shall provide evidence of, and certify to, in a manner provided by the board, the member's average monthly compensation if that information is not already available from the records of ASRS.

*Originally A.R.S §§38-759 and 38-781.07, and as added by Laws 1953, Ch. 128, §8. As amended by Laws 1954, Ch. 116, §5; Laws 1955, Ch.104, §1; Laws 1957, Ch. 96, §5; Laws 1958, Ch. 95, §1; Laws 1970, Ch. 134, §2, Ch. 136, §18; Laws 1972, Ch. 51, §16; Laws 1974, Ch. 120, §§3, 7, and Ch. 167, §4; Laws 1975, Ch. 54, §2; Laws 1978, Ch. 54, §4, and Ch. 209, §§5, 8; Laws 1981, Ch. 284, §§1, 3; Laws 1983, Ch. 293, §2; Laws 1985, Ch. 294, § 5, and Ch. 309, §§1, 2; Laws 1986, Ch. 168, §2; Laws 1987, Ch. 274, §2; Laws 1988, Ch. 256, §1; Laws 1991, Ch. 170, §2; Laws 1992, Ch. 320, §10; Laws 1994, Ch. 356, §7, Ch. 357, §1; Laws 1995, Ch. 32, §14; Laws 1999, Ch. 327, §13 (SB 1083). Section 38-757, Arizona Revised Statutes, as amended by this act, and section 28 of this act, relating to benefit increases for Arizona state retirement system defined benefits retirees, are effective from and after June 30, 2000. As amended by Laws 2001 Chapter 380, §6 (SB 1295).*

### **38-758. Early retirement**

A. A member who has attained age fifty and who has five years of total credited service is eligible to elect, in a form and manner prescribed by the board, to receive a reduced retirement income.

B. The benefit payable to a member electing early retirement shall be determined by reducing the normal retirement benefit computed in accordance with section 38-757 either:

1. At the rate of three per cent per year from age sixty to age sixty-five and five per cent per year from age fifty to age sixty. The reduction in normal retirement benefits pursuant to this paragraph for an eligible member electing early retirement shall be based on the period from the date of commencement of early retirement benefits to the member's sixtieth birthday if the member has at least twenty years of total credited service, sixty-second birthday if the member has at least ten but less than twenty years of total credited service or sixty-fifth birthday if the member has at least five but less than ten years of total credited service.

2. If the sum of a member's age and years of total credited service equals seventy-seven or more, but is less than eighty, at the rate of three per cent for each unit of one or fraction of one by which the sum is less than eighty.



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*Originally A.R.S. §38-781.08. As amended by Laws 1981, Ch. 284, §5; Laws 1983, Ch. 293, §3; Laws 1988, Ch. 272, §1; Laws 1990, Ch. 396, §2; Laws 1991, Ch. 170, §3, and Ch. 270, §5; Laws 1992, Ch. 319, §34; Laws 1994, Ch. 356, § 10; Laws 1995, Ch. 32, §14.*

**38-759. Late retirement**

A. A member who is eligible for normal retirement benefits on the member's normal retirement date may elect to defer receiving retirement benefits.

B. Notwithstanding this section, payment of a member's deferred benefits shall not commence later than the April 1 following the calendar year in which the member attains seventy and one-half years of age or the calendar year in which the member terminates employment, whichever occurs later.

*Originally A.R.S. 38-781.09. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §17; Laws 1974, Ch. 120, §9; Laws 1983, Ch. 293, §4; Laws 1986, Ch. 168, §3; Laws 1995, Ch. 32, §14.*

**38-760. Optional forms of retirement benefits**

A. On retirement, members may elect an optional form of retirement benefit as provided in this section.

B. The optional retirement benefits available under this section include the following:

1. Joint and survivor annuity in a reduced amount payable to the retiring member during life, with the provisions that after the member's death all, two-thirds or one-half of the retirement income, as the member elects, shall be continued during the lifetime of the contingent annuitant designated by the retiring member subject to the restrictions prescribed in section 38-764. The amount of retirement income shall be the actuarial equivalent of the retirement income to which the member would be entitled under normal or early retirement. The election in a manner prescribed by the board shall name the contingent annuitant. The election may be revoked at any time before the member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If a different contingent annuitant is named, the annuity of the member under the same joint and survivor annuity option previously elected shall be adjusted to the actuarial equivalent of the original annuity, based on the age of the new contingent annuitant. The adjustment shall include all post-retirement increases in retirement income that are authorized by



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law after the member's date of retirement. Payment of this adjusted annuity shall continue under the provisions of the option previously elected by the member.

(b) If the member rescinds the election, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the joint and survivor annuity option, including all post-retirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime.

(c) If the member reverts to a straight life annuity pursuant to subdivision (b), the member may name a new contingent annuitant subject to the same restrictions prescribed in subdivision (a).

2. A period certain and life annuity actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the member but whose payments continue for the member's lifetime beyond the five, ten or fifteen year period. At any time, a member who retires after the effective date of this amendment to this section may rescind the election of a period certain and life annuity. If the member rescinds the election of a period certain and life annuity, the member shall thereafter receive a straight life annuity equal to what the member would otherwise be entitled to receive if the member had not elected the period certain and life annuity option, including all postretirement increases in retirement income that are authorized by law after the date of retirement. The increased payment shall continue during the remainder of the member's lifetime. If the member reverts to a straight life annuity pursuant to this paragraph, the member may again elect a period certain and life annuity subject to the same provisions of the period certain and life annuity previously elected by the member.

3. Beginning on July 1, 2002, a lump sum payment equal to not more than thirty-six months of the member's retirement benefits under the benefit option elected by the member. The member's benefit shall be actuarially reduced to provide for the lump sum payment. The lump sum payment shall be made at the time of retirement. Any benefit increase granted to a member who elects a lump sum payment pursuant to this paragraph is subject to the following conditions:

(a) If the benefit increase is a percentage increase of the member's retirement benefit, the increase shall be based on the actuarially reduced retirement benefit of the member.

(b) If the benefit increase is pursuant to section 38-767, the amount of the member's benefit increase shall be calculated without regard to the lump sum payment pursuant to this paragraph.

4. Other forms of actuarially reduced optional benefits prescribed by the board.



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*Originally A.R.S. §38-781.10. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §18; Laws 1985, Ch. 294, §6; Laws 1986, Ch. 83, §1, and Ch. 168, §4; Laws 1990, Ch. 396, §3; Laws 1991, Ch. 170, §4, Ch. 217, §1, and Ch. 270, §6; Laws 1992, Ch. 252, §1; Laws 1994, Ch. 356, §11; Laws 1995, Ch. 32, §14; Laws 1999 Ch. 121 (SB 1012), §1; Laws 2001, Ch. 136, §15 (SB 1117); Laws 2001, Ch. 380, §7 (SB 1295).*

### **38-761. Level income alternative**

A. Any member who retires before age sixty-two may elect, at any time before the date the first payment on account of the member's retirement benefit normally becomes due, to convert the retirement benefit otherwise payable to the member after retirement into a reduced retirement benefit that is its actuarial equivalent and is of an amount that, with the member's primary insurance amount under title II of the social security act, the member will receive, as far as possible, the same amount each year before and after the primary insurance amount begins.

B. A member may rescind the member's election of the reduced retirement benefit provided by subsection A within six months after the member's date of retirement if the member reimburses ASRS with a lump sum payment for any additional benefits paid to the member pursuant to this section.

*Former §38-761 was repealed by Laws 1992, Ch. 320, §1. The current version was added by Laws 1995, Ch. 32, §14.*

### **38-762. Survivor benefits before retirement; definition**

A. On the termination of employment by death of any active or inactive member before retirement, the designated beneficiary of the member shall be paid a survivor benefit equal to the sum of both of the following:

1. Two times the member's contribution to the defined benefit plan established by this article.
2. The amount of the member's employee account and the member's employer account together with supplemental credits, if any, transferred from the defined contribution program administered by ASRS to the defined benefit program established by this article.

B. Subsection A, paragraphs 1 and 2 shall be accumulated at compound interest at the valuation rate established by the board through the day of the payment of the benefit.



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C. In lieu of a single payment, a designated beneficiary who is eligible for a survivor benefit pursuant to subsection A of more than five thousand dollars may elect to receive the actuarial equivalent of the survivor benefit pursuant to one of the following options:

1. A monthly income for five, ten or fifteen years certain and for life thereafter.
2. Another form of optional benefits approved by the board.

D. On the death of an active or inactive member who has reached an early retirement date applicable to the member or who has a minimum of fifteen years of credited service and whose designated beneficiary is a spouse, child under the age of twenty-one or handicapped child age twenty-one or older, including a legally adopted child or a stepchild, ASRS shall pay the designated beneficiary a survivor benefit equal to the present value, on the date following the date of the member's death, of the life annuity that would have been payable to the designated beneficiary if the member had retired on the date of the member's death and elected to receive an annuity in the form of a joint and survivor annuity providing the same amount of annuity to the surviving beneficiary as the reduced amount that would have been payable during the lifetime of the member. If there is more than one designated beneficiary under this subsection, ASRS shall determine the amount of the annuity and its present value as if the oldest of the beneficiaries was the sole beneficiary. Payment under this subsection shall be in lieu of, but not less than, any payment under subsection A. Payment under this subsection, at the election of the designated beneficiary, may be made in a single sum or may be made in accordance with subsection C. A beneficiary may not elect this option unless a benefit of twenty-five dollars or more per month is payable to the designated beneficiary or the designated beneficiary's estate.

E. If a member dies before distribution of the member's benefits commences, the member's entire benefits shall be distributed no later than five years after the member's death, except to the extent that, if any portion of the member's interest is payable to a designated beneficiary, distributions may be made in substantially equal installments over the life expectancy of the designated beneficiary or over a period not extending beyond the life expectancy of the beneficiary commencing no later than one year after the member's death.

F. If a deceased member did not designate a beneficiary, the board, in its sole discretion, may direct payment to the member's estate or to another person or persons the board determines to be lawfully entitled to receive payment.

G. Any payment pursuant to this section is payment for the account of the member or the member's beneficiary and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of liability of the board or ASRS, or both, under or in connection with the ASRS.





H. For purposes of this section, "designated beneficiary" means any individual designated by the member as the member's beneficiary.

*Former §38-762 was repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1995, Ch. 32, §14. As amended by Laws 1996, Ch. 185, §14; Laws 1999, Ch. 327, §14 (SB 1083); Laws 2001, Ch. 136, §16 (SB 1117).*

**38-763. Survivor benefits after retirement**

A. Except as provided in subsection B, if a member dies after distribution of retirement benefits commences, ASRS shall continue to distribute the remaining portion of retirement benefits at least as rapidly as under the method of distribution used before the retired member's death.

B. On the death of a retired member who is receiving benefits, the estate or beneficiary of the member is entitled to receive at least the amount of the member's contribution to ASRS plus interest, as determined by the director, less the benefits received by the member. This amount is payable either as a lump sum or at the same periodic rate in effect at the time of the member's death, as determined by the estate or beneficiary.

*Former §38-763 was repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1995, Ch. 32, §14. As amended by Laws 1997, Ch. 280, §13.*

**38-764. Commencement of retirement; payment of retirement benefits; lump sum payments**

A. Retirement is deemed to commence on a date elected by the member. That date shall not be earlier than the day following the date of termination of employment, the date ASRS receives the member's completed retirement application or the date specified by the member pursuant to subsection I.

B. Except as provided in subsection C, all retirement benefits:

1. Are normally payable in monthly installments beginning on the commencement of retirement as prescribed in subsection A.

2. Continue to and include the first day of the month in which death occurs or continue until the date of their cessation in accordance with any optional method of payment that may have been elected.



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C. In the case of incapacity of a retired member or contingent annuitant, or in the case of any other emergency, as determined by the board, the board may make the payment to or on behalf of the retired member or contingent annuitant or to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the retired member or contingent annuitant and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or ASRS, or both, under or in connection with ASRS.

D. Except as provided in subsection E, at the request of a retired member, a retired member's guardian or a court appointed conservator, the board may pay any increase in retirement benefits or the entire retirement benefit in a lump sum payment based on the actuarial present value of the benefit or the increase in the benefit if the payment of the benefits would result in ineligibility, reduction or elimination of social service programs provided to the member by this state, its political subdivisions or the federal government.

E. The board may pay the entire retirement benefit in a lump sum pursuant to subsection D only if continued membership in ASRS will result in additional requests for lump sum payments based on cost of living adjustments or the establishment of minimum benefit awards.

F. If any benefit that is payable as a series of periodic payments amounts to less than twenty dollars per month, the board, in its sole discretion and based on uniform rules it establishes, may order the amount to be paid quarterly, semiannually, annually or in a lump sum. A member who receives a lump sum payment pursuant to this subsection remains a member of ASRS.

G. All distributions of retirement benefits to a member shall be distributed either:

1. Over a period not exceeding the life of the member or over the lives of the member and the member's contingent annuitant.

2. Over a period not extending beyond the life expectancy of the member or the life expectancy of the member and the member's contingent annuitant.

H. A member may elect to cancel the effective date of retirement within thirty days of retirement or before the member's receipt of retirement benefits, whichever is later.

I. Notwithstanding any other provision of this article, all distributions under this article shall be made in accordance with the distribution requirements of section 401(a)(9) of the internal revenue code.



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J. A member who attains a normal retirement date may retire at any time without terminating employment if the member is employed for less than the hours required for active membership pursuant to section 38-711, paragraph 22, subdivision (b).

*Originally A.R.S. §38-781.13. As amended by Laws 1970, Ch. 134, §2; Laws 1983, Ch. 293, §5; Laws 1987, Ch. 274, §3; Laws 1990, Ch. 90, §1; Laws 1992, Ch. 320, §12; Laws 1994, Ch. 356, §13; Laws 1995, Ch. 32, §14; Laws 1996, Ch. 185, §15; Laws 1999, Ch. 327, §14 (SB 1083).*

### **38-765. Errors; benefit recomputation**

If any change or error in the records results in any member or beneficiary receiving from ASRS more or less than the member or beneficiary would have been entitled to receive if the records had been correct, the board shall correct the error and as far as practicable shall adjust the payments in a manner so that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or beneficiary or shall recover monies from the member or beneficiary if the member or beneficiary is overpaid.

*Originally A.R.S. §38-781.15. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §19; Laws 1975, Ch. 54, §3; Laws 1987, Ch. 274, §4; Laws 1988, Ch. 19, §2; Laws 1990, Ch. 145, §3; Laws 1992, Ch. 320, §13; Laws 1995, Ch. 32, §14.*

### **38-766. Retired members; return to work; maximum benefit**

A. A retired member who is engaged to work by an employer for at least twenty weeks in each fiscal year and at least twenty hours per week resumes active membership in ASRS. ASRS shall suspend payment of the member's retirement benefits until the member either:

1. Terminates employment.
2. Attains a normal retirement date and no longer meets the requirements for active membership pursuant to this subsection.

B. A member who satisfies subsection A, paragraph 1 or 2 of this section is entitled to receive an annuity recomputed to include the additional compensation and credited service. However, the recomputed annuity shall be in the original optional form chosen pursuant to section 38-760, with the same beneficiary, if applicable, as when the member first retired. A member who retired under a provision of law allowing increased benefits if the retirement occurred during a specific period of time and who subsequently becomes an employee under



ASRS shall not retain the increased benefits under the prior law when benefits are computed for the member's most recent retirement.

C. Section 38-769, subsection N applies when determining the maximum benefit that may be paid to a retired member who resumes active membership and subsequently retires.

*Originally A.R.S. §38-781.15. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §19; Laws 1975, Ch. 54, §3; Laws 1987, Ch. 274, §4; Laws 1988, Ch. 19, §2; Laws 1990, Ch. 145, §3; Laws 1992, Ch. 320, §13; Laws 1995, Ch. 32, §14; Laws 1997, Ch. 280, §14; Laws 1999, Ch. 327, §16 (SB 1083).*

### **38-766.01. Retired teachers; return to work**

(Repealed 7/1/03)

A. Notwithstanding section 38-766, a retired member may return to work and still be eligible to receive retirement benefits if all of the following requirements are satisfied:

1. The retired member has attained the member's normal retirement age.
2. The retired member terminated employment at least twelve months before returning to work.
3. If the retired member returns to work as a teacher, the retired member is working as a certificated teacher.
4. If the retired member returns to work as a teacher, the retired member's employment is not subject to the requirements prescribed in sections 15-538, 15-538.01 and 15-539 through 15-543.
5. The retired member acknowledges in writing the provisions of this section.

B. An employer of a retired member who returns to work pursuant to this section shall not pay contributions on behalf of the retired member pursuant to section 38-736, 38-737 or 38-797.05. A retired member who returns to work pursuant to this section does not accrue credited service, retirement benefits or long-term disability program benefits pursuant to article 2.1 of this chapter for the period the retired member returns to work.

*As added by Laws 2000 Chapter 132, § 2, Eff. July 18, 2000. As amended by Laws 2001, Chapter 68, §1 (HB 2050).*



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**38-767. Benefit increases**

A. Effective July 1 of each year, each retired member or beneficiary of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined in subsection D of this section if the retired member or beneficiary of a retired member was receiving benefits on or before July 31 of the previous calendar year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence on July 1.

B. The total amount of the percentage increase provided in subsection A of this section shall not exceed four per cent in aggregate for all persons eligible for an increase. The percentage payable from excess investment earnings shall be determined as follows:

1. Determine any excess investment earnings account balance available.
2. Determine the total excess investment earnings as provided in subsection C of this section.
3. Add the amount determined in paragraph 1 of this subsection to the amount determined in paragraph 2 of this subsection.
4. Determine one per cent of the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.
5. Divide the amount determined in paragraph 3 of this subsection by the amount determined in paragraph 4 of this subsection. If the quotient is equal to or more than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is four per cent. If the quotient is one or more but less than four, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the actuarial present value of benefits for all retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and eight per cent. The



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excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to eight per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 5 of this section by the actuarial present value of benefits for retired members and beneficiaries as of June 30 of the year prior to the year for which an increase is being granted.

2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.

3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.

4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. Monies available for future benefit increases shall earn interest at a rate of eight per cent per year. This interest shall be used to pay the additional benefit increases provided for in subsection G of this section.

G. In addition to a benefit increase pursuant to subsection A of this section, if a retired member had more than ten years of credited service, the retired member or beneficiary of the retired member is entitled to receive a benefit increase based on the number of years following retirement as follows:



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1. At least five years but less than ten years, a monthly benefit increase equal to the amount determined in subsection H of this section.

2. At least ten years but less than fifteen years, a monthly benefit increase equal to two times the amount determined in subsection H of this section.

3. At least fifteen years but less than twenty years, a monthly benefit increase equal to three times the amount determined in subsection H of this section.

4. At least twenty years but less than twenty-five years, a monthly benefit increase equal to four times the amount determined in subsection H of this section.

5. At least twenty-five years but less than thirty years, a monthly benefit increase equal to five times the amount determined in subsection H of this section.

6. At least thirty years, a monthly benefit increase equal to six times the amount determined in subsection H of this section.

H. The amount of the monthly benefit increase under subsection G of this section for a retired member or beneficiary of a retired member who is entitled to the increase when at least five years but less than ten years have elapsed since the retired member's retirement date is equal to the amount obtained by dividing the amount of interest credited pursuant to subsection F of this section by the amount that equals the sum of:

1. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of one dollar per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least five years but less than ten years have elapsed since the retired members' retirement dates.

2. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of two dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least ten years but less than fifteen years have elapsed since the retired members' retirement dates.

3. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of three dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this



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section and for whom at least fifteen years but less than twenty years have elapsed since the retired members' retirement dates.

4. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of four dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty years but less than twenty-five years have elapsed since the retired members' retirement dates.

5. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of five dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least twenty-five years but less than thirty years have elapsed since the retired members' retirement dates.

6. The actuarial present value, as of June 30 of the year prior to the year for which the increase is granted, of a benefit increase of six dollars per month for the retired members and beneficiaries of retired members who are eligible for an increase under subsection G of this section and for whom at least thirty years have elapsed since the retired members' retirement dates.

I. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to transfer irrevocably from the defined contribution program administered by ASRS to the defined benefit program established by this article.

J. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

K. As used in this section, the actuarial present value of benefits for retired members and beneficiaries does not include the value of benefits provided pursuant to section 38-783.

*Originally A.R.S. §38-781.27. As amended by Laws 1994, Ch. 357, §2; Laws 1995, Ch. 32, §14, and Ch. 134, §9; Laws 1997 Ch. 280, §15; Laws 1999, Ch. 174 (SB 1035); Laws 2000, Ch. 66, §1; Laws 2001, Ch. 380, §8 (SB 1295).*

### **38-768. Minimum retirement benefit**

A. Notwithstanding any other provision of this article, a retired member or beneficiary who is entitled to a benefit under this article shall receive at least a minimum monthly benefit





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that is computed pursuant to subsection B of this section if the retired member or beneficiary is at least seventy-five years of age and if the retired member or beneficiary is any of the following:

1. Retired from ASRS with at least twenty years of credited service.
2. A beneficiary of ASRS who is receiving benefits derived from a retired member who had at least twenty years of credited service.
3. A member with at least twenty years of service who irrevocably revokes the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elects to receive benefits under this article.
4. A beneficiary who is receiving benefits derived from a retired member who had at least twenty years of service, who irrevocably revoked the receipt of benefits determined on the basis of membership in the defined contribution program administered by ASRS and who elected to receive benefits under this article.

B. The minimum monthly benefit provided by subsection A of this section:

1. For retired members is six hundred dollars.
2. For beneficiaries is the amount determined by paragraph 1 of this subsection and reduced in accordance with the option chosen by multiplying the amount determined by paragraph 1 of this subsection by the actuarial figure for the option chosen and by the percentage of the option chosen.

C. If the minimum monthly benefit pursuant to subsections A and B of this section is more than the retired member's or beneficiary's current monthly benefit, the retired member or beneficiary is eligible to receive a monthly benefit equal to the minimum benefit. If the retired member's or beneficiary's current monthly benefit is more than the minimum benefit, the retired member's or beneficiary's benefit remains the same.

D. A member who receives a lump sum payment pursuant to section 38-764, subsection D is not eligible for a minimum benefit as provided by this section.

*Originally A.R.S. §38-781.26. As amended by Laws 1994, Ch. 357, §2; Laws 1995, Ch. 32, §14; Laws 1996, Ch. 185, §16.*



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**38-769. Maximum retirement benefits; termination; definitions**

A. Notwithstanding any other provision of this article, except as provided in subsection C of this section, the employer provided portion of a member's annual benefit, at any time within a limitation year, shall not exceed ninety thousand dollars or a larger amount that is prescribed by the board and that is due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. The board shall increase the amount pursuant to this paragraph as of the effective date of the increase as prescribed by the United States secretary of the treasury.

B. Notwithstanding the limitations of subsection A of this section, the benefits payable to a member are deemed not to exceed the limitations determined under subsection A of this section if the retirement benefits payable to the member under this article do not exceed ten thousand dollars for the limitation year and if an employer has not at any time maintained a defined contribution plan in which the member has participated.

C. The limitations determined under subsection A of this section are subject to the following adjustments:

1. If a member has less than ten years of membership in ASRS, the maximum dollar limitation determined under subsection A of this section shall be multiplied by a fraction, the numerator of which is the number of years, or partial years, of membership in ASRS and the denominator of which is ten. The reduction provided in this paragraph also applies to the ten thousand dollar floor limitation provided in subsection B of this section, except that the reduction applies to years of service with an employer rather than to years of membership in ASRS. The reduction in this paragraph does not reduce the limitations determined under subsection A of this section to an amount less than one-tenth of the limitations as determined without regard to this paragraph.

2. If a member's annual benefit commences before the member attains sixty-two years of age, the limitation determined under subsection A of this section shall be adjusted to the actuarial equivalent of an annual benefit equal to the dollar limitation commencing at sixty-two years of age. The actuarial equivalent under this paragraph shall not be less than seventy-five thousand dollars if a member's annual benefit commences at or after fifty-five years of age. If a member's annual benefit commences before fifty-five years of age, the actuarial equivalent shall equal the greater of:

(a) The actuarial equivalent of a seventy-five thousand dollar annual benefit for fifty-five years of age.



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(b) The actuarial equivalent of the dollar limitation determined under subsection A of this section for sixty-two years of age. Actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to the greater of five per cent a year or the rate specified by the board as provided in section 38-711, paragraph 2.

3. If a member's annual benefit commences after sixty-five years of age, the limitation determined under subsection A of this section shall be adjusted to the actuarial equivalent of an annual benefit equal to the dollar limitation commencing at sixty-five years of age. Actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to the lesser of five per cent a year or the rate specified by the board as provided in section 38-711, paragraph 2.

4. If the member's benefit is paid in a form other than an annual benefit, the benefit paid may not exceed the actuarial equivalent of the maximum annual benefit payable as a straight life annuity disregarding the portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code. Actuarial equivalency under this paragraph shall be determined by the use of an interest rate assumption equal to the greater of five per cent a year or the rate specified by the board as provided in section 38-711, paragraph 2.

5. For the purposes of adjusting any benefit or limitation under paragraph 2, 3 or 4 of this subsection, the board shall use the mortality table prescribed by the United States secretary of the treasury as required by section 415(b)(2)(E)(v) of the internal revenue code.

D. Subsection C, paragraphs 1 and 2 of this section do not apply to income received from ASRS as a pension, annuity or similar allowance as a result of the recipient becoming disabled by personal injury or sickness or to amounts received from ASRS by beneficiaries, survivors or the estate of a member as a result of the death of the member.

E. For limitation years beginning before July 1, 2000, the board shall limit benefits payable to a member who is a member of ASRS and any other defined benefit plan maintained by the member's employer and a defined contribution plan maintained by the member's employer in a manner it determines to be necessary to prevent the sum of the following fractions from exceeding 1.0:

1. The projected annual benefit of the member under ASRS and any other defined benefit plan maintained by the member's employer in which the member participated as of the date of determination divided by the lesser of:



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(a) The product of 1.25 multiplied by the dollar limitation in effect under subsection A of this section for the limitation year.

(b) One hundred forty per cent of the member's average compensation for the member's high three consecutive years of service. For the purposes of this subdivision, a member's high three consecutive years of service is the period of three consecutive years or the actual number of consecutive years of employment for a member who is employed less than three consecutive years with the employer during which the member had the greatest aggregate compensation from the employer.

2. The sum of the annual additions on behalf of the member as of the limitation year in which the determination is made under ASRS and any defined contribution plan maintained by the member's employer divided by the lesser of the following amounts determined for the limitation year and for each prior year of service with the employer:

(a) The product of 1.25 multiplied by the dollar limitation in effect under section 38-747, subsection E, paragraph 1, subdivision (a) for the limitation year.

(b) Thirty-five per cent of the member's compensation in the limitation year.

F. ASRS shall compute the fractions prescribed in subsection E of this section as of the close of any limitation year beginning before July 1, 2000. For the purposes of determining a member's projected annual benefit adjusted to an actuarially equivalent straight life annuity if the benefit is expressed in a form other than a straight life annuity or a qualified joint and survivor annuity as defined in section 417 of the internal revenue code under any defined benefit plan maintained by an employer and subject to the limitation prescribed by subsection E of this section, the benefit shall be based on the following assumptions:

1. The member will continue covered employment until reaching the member's normal retirement date determined under the defined benefit plan or the current date, whichever is later.

2. The member's compensation for the limitation year under consideration will remain constant until the member's normal retirement date or actual retirement.

3. All other relevant factors used to determine benefits under the defined benefit plan will remain constant for all future limitation years.

G. Notwithstanding any other provision of this section, the annual benefit payable under this article may be reduced to the extent necessary, as determined by the board, to prevent disqualification of ASRS under section 415 of the internal revenue code that imposes additional



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limitations on the annual benefits payable to members who also may be participating in another tax qualified pension or savings plan of this state. An employer shall not provide employee retirement or deferred benefits if the benefits authorized by this section and as required by federal law result in the failure of ASRS to meet federal qualification standards as applied to public pension plans. The board shall advise affected members of any additional information concerning their annual benefits required by this subsection.

H. If the maximum amount of benefit allowed under section 415 of the internal revenue code is increased after the commencement date of a member's benefit due to any cost of living adjustment announced by the United States secretary of the treasury pursuant to the provisions of section 415(d) of the internal revenue code, the amount of the monthly benefit payable under ASRS to a member whose benefit is restricted due to the provisions of section 415(d) of the internal revenue code shall be increased by the board as of the date prescribed by the United States secretary of the treasury on which the increase shall become effective. The increase shall reflect the increase in the amount of retirement income that may be payable under this article as a result of the cost of living adjustment.

I. In determining the adjustments authorized by subsections A and B of this section, the board shall prescribe a larger amount if prescribed by the United States secretary of the treasury pursuant to section 415(d) of the internal revenue code. An adjustment to the dollar limitation prescribed in subsection A of this section is not effective before the first calendar year for which the United States secretary of the treasury publishes the adjustment. After it is prescribed by the board, the new dollar limitation applies to the limitation year ending with or within the calendar year for which the secretary of the treasury makes the adjustment. To the extent provided in regulations promulgated by the United States secretary of the treasury, the adjustments to the limitation made by the board pursuant to subsection C, paragraph 1 of this section shall be applied separately to each change in the benefit structure of ASRS.

J. For the purposes of the limitations prescribed by this section, all member and employer contributions made to ASRS to provide a member benefits pursuant to section 38-771 and all member contributions that are not treated as picked up by the employer under section 414(h)(2) of the internal revenue code shall be treated as made to a separate defined contribution plan.

K. On termination of ASRS the accrued benefit of each member is, as of the date of termination, fully vested and nonforfeitable.

L. If ASRS terminates, the benefit of any highly compensated employee as defined in section 414(q) of the internal revenue code and any highly compensated former employee is limited to a benefit that is nondiscriminatory under section 401(a)(4) of the internal revenue code and as follows:



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1. Benefits distributed to any of the twenty-five active and former highly compensated employees with the greatest compensation in the current or any prior fiscal year are restricted so that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the member under a straight life annuity that is the actuarial equivalent of the sum of the member's accrued benefit, the member's other benefits under ASRS, excluding a social security supplement as defined in 26 Code of Federal Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is entitled to receive under a social security supplement.

2. Paragraph 1 of this subsection does not apply if either:

(a) After payment of the benefit to a member described in paragraph 1 of this subsection, the value of ASRS assets equals or exceeds one hundred ten per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS.

(b) The value of the benefits for a member described in paragraph 1 of this subsection is less than one per cent of the value of the current liabilities, as defined in section 412(l)(7) of the internal revenue code, of ASRS before distribution.

(c) The value of the benefits payable by ASRS to a member described in paragraph 1 of this subsection does not exceed three thousand five hundred dollars.

M. For the purposes of subsection L of this section, "benefit" includes loans in excess of the amount prescribed in section 72(p)(2)(A) of the internal revenue code, any periodic income, any withdrawal values payable to a living member and any death benefits not provided for by insurance on the member's life.

N. On retirement of a member who was a retired member, who resumed active membership and who subsequently retires, the limitations of this section in effect on the member's subsequent retirement apply to the member's retirement benefit payable as recomputed pursuant to section 38-766. In addition, the sum of the present value of the member's recomputed retirement benefits plus the present value of the benefits the member received during the member's prior retirement shall not exceed the present value of the limitations in effect on the member's subsequent retirement. The limitations prescribed in this subsection shall not reduce a member's retirement benefit below the retirement benefit the member was receiving before the member resumed active membership. For the purposes of determining present value under this subsection, the board shall use the actuarial equivalent assumptions provided in section 38-711, paragraph 2.

O. For purposes of this section:



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1. Annual additions shall be determined as provided in section 38-747, subsection. M.

2. **"Annual benefit"** means a benefit, including any portion of a member's retirement benefit payable to an alternate payee under a qualified domestic relations order that satisfies the requirements prescribed in section 414(p)(1)(A)(i) of the internal revenue code and section 38-773, payable annually in the form of a straight life annuity, disregarding the portion of a joint and survivor annuity that constitutes a qualified joint and survivor annuity as defined in section 417 of the internal revenue code, with no ancillary or incidental benefits or rollover contributions and excluding any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under section 415 of the internal revenue code but including any of those contributions that are picked up by the employer under section 414(h) of the internal revenue code, or that otherwise are not treated as a separate defined contribution plan. If the benefit is payable in another form, the determination as to whether the limitation described in subsection A of this section has been satisfied shall be made by the board by adjusting the benefit so that it is actuarially equivalent to the annual benefit described in this paragraph in accordance with the regulations promulgated by the United States secretary of the treasury. In addition, for determining the annual benefit attributable to member contributions, the factors described in section 411(c)(2)(B) of the internal revenue code and the regulations promulgated under the internal revenue code shall be used by the board regardless of whether section 411 of the internal revenue code applies to ASRS. The factors described in section 411(c)(2)(B) of the internal revenue code shall be those factors described under section 417(e)(3) of the internal revenue code and determined on the basis of the 417(e) mortality table and an interest rate equal to the annual yield for thirty-year treasury constant maturities, as reported in federal reserve statistical release G-13 and H-15, for the third full calendar month preceding the plan year for which the determination is made. For the purposes of this paragraph, "the 417(e) mortality table" means the mortality table that is published by the United States treasury department as the table to be used for the purposes of section 417(e) of the internal revenue code to determine the single sum value of an accrued benefit.

3. **"Compensation"** means the member's earned income, wages, salaries, fees for professional service and other amounts received for personal services actually rendered in the course of employment with the employer and includes amounts described in sections 104(a)(3) and 105(a) of the internal revenue code, but only to the extent that these amounts are includable in the gross income of the member. Compensation does not mean:

(a) Employer contributions to a plan of deferred compensation to the extent the contributions are not included in the gross income of the employee for the taxable year in which contributed, on behalf of an employee to a simplified employee pension plan described in section 408(k) of the internal revenue code and any distributions from a plan of deferred compensation, regardless of whether the amounts are includable in gross income of the employee when





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distributed, except that any amount received by a member pursuant to an unfunded nonqualified plan may be considered as compensation for the purposes of this section in the year the amounts are includable in the gross income of the member under the internal revenue code.

(b) Other amounts that receive special tax benefits, such as premiums for group term life insurance, but only to the extent that the premiums are not includable in the gross income of the employee, or contributions made by the employer, whether or not under a salary reduction agreement, towards the purchase of an annuity contract described in section 403(b) of the internal revenue code, whether or not the contributions are excludable from the gross income of the employee.

4. **"Defined benefit plan"** has the same meaning prescribed in section 414(j) of the internal revenue code.

5. **"Defined contribution plan"** has the same meaning prescribed in section 414(i) of the internal revenue code.

6. **"Limitation year"** and **"years of service"** means the fiscal year.

*Originally A.R.S. §38-781.38. As amended by Laws 1986, Ch. 168, §7; Laws 1991, Ch. 170, §8; Laws 1994, Ch. 356, §17; Laws 1995, Ch. 32, §14; Laws 1996, Ch. 185, §17; Laws 1997, Ch. 280, §16; Laws 1998, Ch. 155, §3; Laws 2001, Ch. 136, §17 (SB 1117).*

### **38-770. Eligible rollover distribution; definitions**

A. Notwithstanding any other provision of this article that would limit a distributee's election under this section, a distributee may elect, at any time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. An eligible rollover distribution may commence less than thirty days after the notice required under section 402(f) of the internal revenue code is given to the distributee, provided that both:

1. ASRS clearly informs the distributee that the distributee has a right to a period of at least thirty days after receiving the notice to consider the decision of whether or not to elect a direct rollover.

2. The distributee, after receiving the notice, affirmatively elects a distribution.





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C. For the purposes of this section:

1. **"Direct rollover"** means a payment by ASRS to the eligible retirement plan specified by the distributee.

2. **"Distributee"** means a member, a member's surviving spouse or a member's former spouse.

3. **"Eligible retirement plan"** means:

(a) For a member any of the following that accepts the distributee's eligible rollover distribution:

(i) An individual retirement account described in section 408(a) of the internal revenue code.

(ii) An individual retirement annuity described in section 408(b) of the internal revenue code.

(iii) An annuity plan described in section 403(a) of the internal revenue code.

(iv) A qualified trust described in section 401(a) of the internal revenue code.

(b) For a surviving or former spouse any of the following that accepts the distributee's eligible rollover distribution:

(i) An individual retirement account described in section 408(a) of the internal revenue code.

(ii) An individual retirement annuity described in section 408(b) of the internal revenue code.

4. **"Eligible rollover distribution"** means distribution of all or any portion of the balance to the credit of the distributee but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's designated beneficiary or for a specified period of ten years or more.



(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) The portion of any distribution that is not includable in gross income.

*Originally A.R.S. §38-781.45. As amended by Laws 1994, Ch. 356, §20; Laws 1995, Ch. 32, §14; Laws 1996, Ch. 185, §17; Laws 1997, Ch. 280, §16.*

### **38-771. Benefit options for transferred defined contribution program members; definitions**

(L99, ch 266, sec 2. Conditionally effective)

A. On or before December 31, 1995 a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section.

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

C. If a member elects to receive retirement benefits provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.

2. Except as provided in subsections E and F of this section, contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975, plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Notwithstanding sections 38-736 and 38-737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation and, beginning on July 1, 1998, employers shall make contributions to ASRS on behalf of their respective members who have elected to receive retirement benefits provided under this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for



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those retired members and their dependents as provided under section 38-783. Member contributions pursuant to this subsection shall be salary reduction contributions pursuant to section 38-747, subsections C and D.

E. Subject to subsection F of this section, if a member desires to receive retirement benefits based on subsection C, paragraph 2 of this section, the member shall make the election on or before June 30, 1999 and during the member's active employment. The election shall be made in accordance with section 38-747, subsections C, D and H. If a member elects to receive retirement benefits based on subsection C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS the difference between the contributions made and seven per cent of the member's gross compensation from July 1, 1984 through December 31, 1995. If a member elects to have the member's employer make payments for all or a portion of the contributions pursuant to section 38-747, subsection D, the member's employer shall make the contributions as required by section 38-747, subsection D. If a member elects to make contributions pursuant to section 38-747, subsection H, both the member and the member's employer shall pay to ASRS the portion of the difference between the total required contributions and that portion of the required contributions that the member has elected to have the member's employer pay pursuant to section 38-747, subsection D. The member's employer shall make the employer's contributions attributable to a member's period of employment before July 1, 1999 in a single lump sum payment at the time and computed in the manner prescribed in section 38-771.01, subsections G and H. If a member elects pursuant to subsection C, paragraph 2 of this section to have contributions made or to make contributions pursuant to section 38-747, subsection D or H for less than the full amount permitted by this subsection the member's benefits shall be computed only with reference to the contributions actually made. A member shall make an election pursuant to this section with respect to contributions to be made by the member before July 1, 1999. This election shall remain in full force and effect on and after July 1, 1999 and may be modified or revoked by the member only if the modification or revocation is specifically authorized in section 38-747. Section 38-771.01 governs any elections made by a member with respect to contributions to be made by the member to ASRS on or after July 1, 1999.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38-747, subsection E. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the limits of section 38-747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits



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of section 38-747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38-747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. For purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

G. A member who elects to receive retirement benefits provided under this section is subject to the provisions of section 38-771.01, subsection K that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

J. For purposes of this section:

1. **"Member's employer"** means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

2. **"Retirement account"** means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

*Originally A.R.S. §38-781.44. As amended by Laws 1991, Ch. 144, §1; Laws 1995, Ch. 32, §14, Ch. 134, §10; Laws 1996, Ch. 135, §1; Laws 1997, Ch. 280, §17; Laws 1999, Ch. 327, §17.*



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**38-771.01. Alternative benefits for transferred defined contribution program members; definitions**

A. A retired or nonretired ASRS member who was a member of the defined contribution program administered by ASRS, who was transferred to the defined benefit program established by this article on July 1, 1981, who is determined by ASRS to qualify under paragraph 1 of this subsection and who is not excluded under paragraph 2 of this subsection shall receive defined contribution benefits pursuant to this section, or, if greater, defined benefit retirement benefits pursuant to this article. A retired or nonretired ASRS member qualifies or is excluded under this section based on the following criteria:

1. A member is entitled to receive benefits under this section only if the member satisfies at least one of the following requirements:

(a) Is not retired as of July 1, 1999 even though the member may have previously elected to receive benefits under the defined benefit program established by this article, may have transferred employment between or among employers on or after July 1, 1981 or may have terminated employment on or after July 1, 1981 and after that termination date returned to employment with an employer.

(b) Retired on or after July 1, 1984 and elected to receive benefits under the defined benefit program established by this article.

(c) Retired on or after July 1, 1984 and is receiving benefits under the defined contribution program administered by ASRS.

2. Even if the member otherwise qualifies under paragraph 1 of this subsection, a member is not entitled to receive benefits under this section if any of the following applies to the member:

(a) The member retired before July 1, 1984.

(b) The member is entitled to receive benefits pursuant to section 38-771 and has paid to ASRS pursuant to section 38-771 before July 1, 1999 the entire amount that is attributable to service performed on or after July 1, 1984 and that is equal to the contribution rate of seven per cent of compensation, the contribution has been matched by an equal contribution to ASRS by the member's employers and all applicable earnings and supplemental credits have been credited for the member's account.



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(c) The member withdrew the member's contributions from the defined contribution program administered by ASRS and, as of July 1, 1999, is not entitled to any benefit under the defined contribution program administered by ASRS.

(d) The member transferred the member's benefits under either the defined benefit program established by this article or the defined contribution program administered by ASRS to any other retirement system.

B. A beneficiary is entitled to receive benefits pursuant to this section only if the beneficiary satisfies the requirements of paragraph 1 of this subsection and is not excluded under paragraph 2 of this subsection based on the following criteria:

1. The beneficiary is a beneficiary of a retired or nonretired member who qualifies for benefits under subsection A, paragraph 1 of this section, is not excluded under subsection A, paragraph 2 of this section and as of July 1, 1999 either:

(a) Is receiving a monthly benefit from the defined benefit program established by this article or the defined contribution program administered by ASRS.

(b) Is living, is a survivor of a deceased retired or nonretired member and elected to receive a lump sum distribution of the survivor benefit that was payable on the death of the member.

2. Even if the beneficiary satisfies the requirements of paragraph 1 of this subsection, a beneficiary is not entitled to receive benefits under this section if the beneficiary is a beneficiary of a deceased retired member who elected a form of benefit under either the defined benefit program established by this article or the defined contribution program administered by ASRS that did not provide for survivor benefits after the death of the retired member.

C. A member or a deceased member's beneficiary who receives benefits pursuant to this section shall receive benefits based on the sum of the following:

1. Contributions paid by the member and the member's employer at the contribution rates in effect before July 1, 1984, together with all applicable earnings and supplemental credits on those contributions.

2. Contributions paid by the member's employer at the contribution rates in effect beginning on July 1, 1984 through the earlier of June 30, 1999 or the member's retirement or death, together with all applicable earnings and supplemental credits on those contributions computed through the earlier of June 30, 1999 or the member's retirement or death.



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3. The excess of employer contributions computed at the rate of seven per cent of compensation beginning on July 1, 1984 through June 30, 1999 over the actual contributions paid by the member's employer as described in paragraph 2 of this subsection, together with all earnings and supplemental credits that would have been earned on those excess contributions computed from the date the contributions would have been paid to ASRS.

4. Contributions paid by the member at the contribution rate in effect on and after July 1, 1984, together with all earnings on those contributions.

5. With respect to member contributions that were not paid to ASRS before July 1, 1999 pursuant to section 38-771, subsection C, paragraph 2, forty per cent of the earnings that would have been credited on those contributions through the earlier of June 30, 1999 or the member's retirement or death as if those member contributions had been paid.

6. Contributions paid by the member to ASRS before July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with all earnings on those contributions.

7. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to an election under section 38-771, subsection C, paragraph 2 and subsection E, together with earnings on those contributions.

8. Contributions paid by the member to ASRS on or after July 1, 1999 pursuant to this section, together with earnings on those contributions.

9. Contributions paid by the member's employer to ASRS on or after July 1, 1999 pursuant to this section, together with all applicable earnings and supplemental credits on those contributions.

D. Effective on July 1, 1999, ASRS shall adjust the retirement account reserves under the defined contribution program administered by ASRS for retired members and the beneficiaries of deceased retired members entitled to benefits pursuant to this section to give effect to additional contributions, earnings and supplemental credits for those retired members prescribed in subsection C, paragraphs 1 through 6 of this section for the periods of the members' employment before July 1, 1999 and to give effect to the recomputation, adjustment and payment of benefits pursuant to subsection G of this section. After this recomputation, adjustment and payment, ASRS shall credit and charge these retirement account reserves with the amounts prescribed under the defined contribution program administered by ASRS based on the adjustments prescribed in this section.





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E. Effective on July 1, 1999, ASRS shall adjust each nonretired member's accounts under the defined contribution program administered by ASRS to equal the sum of the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section with respect to periods of a member's employment before July 1, 1999. After the adjustment, these accounts shall accrue applicable interest and supplemental credits based on the entire amounts credited to the accounts.

F. For periods of a nonretired member's employment on or after July 1, 1999, a nonretired member who is entitled to receive benefits pursuant to this section and the nonretired member's employer shall each make contributions to ASRS at the rates established pursuant to sections 38-736 and 38-737, except as follows:

1. If a nonretired member made an election pursuant to section 38-771, subsection C, paragraph 2 and section 38-747, subsections C and D before July 1, 1999, the member's employer shall continue to make pickup contributions to ASRS on behalf of the member pursuant to the member's election, except that with respect to employer contributions that are required pursuant to section 38-771, subsection E for periods of a member's employment before July 1, 1999, the employer shall make a lump sum payment to ASRS as computed pursuant to subsection G of this section and required to be paid to ASRS pursuant to subsection H of this section.

2. If a nonretired member elected or was deemed to have elected benefits pursuant to section 38-771 before December 31, 1995, for periods of a member's employment from and after the election or deemed election the nonretired member's employer and the member shall each continue to pay to ASRS an amount equal to seven per cent of the member's compensation in lieu of the rates established pursuant to sections 38-736 and 38-737.

3. A nonretired member who is entitled to receive benefits pursuant to this section and who never elected to receive benefits pursuant to section 38-771 may elect pursuant to section 38-747, subsections C and D to make contributions at the rate of seven per cent of the member's compensation for periods of a member's employment on or after July 1, 1999. If a member makes an election pursuant to this paragraph, the election is irrevocable as provided in section 38-747, subsection D and the member and the member's employer shall each make contributions at a rate of seven per cent of the member's compensation beginning on the effective date of the election.

4. A nonretired member who is entitled to receive benefits pursuant to this section may elect pursuant to section 38-747, subsections C, D and H to make contributions with respect to member contributions that were not made to ASRS but that could have been made pursuant to section 38-771, subsection C, paragraph 2 for periods of employment before July 1, 1999 other





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than member contributions for which an irrevocable election pursuant to section 38-747, subsections C and D was in effect before July 1, 1999.

5. In addition to any other employer contributions required pursuant to this section, a nonretired member's employer shall make contributions to ASRS on behalf of the nonretired member who will receive retirement benefits pursuant to this section to pay the actuarially determined amount necessary to provide the group health and accident insurance benefits for the nonretired member and the nonretired member's dependents as provided under section 38-783.

6. Notwithstanding any other provision of this article, an election permitted pursuant to this section shall not revoke, amend or alter any irrevocable election made by a member before July 1, 1999 pursuant to sections 38-747 and 38-771.

G. Effective on July 1, 1999, ASRS shall recompute the monthly and annual benefits for retired members entitled to receive benefits pursuant to this section and the monthly or lump sum survivor's benefits payable to beneficiaries entitled to receive benefits pursuant to this section. The recomputation of benefits shall be as if the member's retirement account or retirement reserve account on the date of retirement or death had been computed based on the amounts that would have been credited to the account as of that date based on the contribution amounts prescribed in subsection C, paragraphs 1 through 6 of this section. In addition and after recomputing benefits described in this subsection, with respect to members who retired on or after July 1, 1984, ASRS shall recompute the annual payments that would have been made to the member or beneficiary of a deceased member entitled to receive benefits under this section in excess of the annual payments actually made. The recomputation shall be calculated and paid as follows:

1. The recomputation shall be calculated and paid based on the member's and, if applicable, the member's beneficiary's age, the benefit option selected at the date of the initial benefit payments and the actuarial assumptions used by ASRS at the time the initial benefit payments were computed.

2. Before July 1, 2000, ASRS shall pay to the retired member or beneficiary in a lump sum the difference between the recomputed amount and the actual distributions paid to the member or beneficiary through July 1, 1999, together with interest at the rate of eight per cent a year, compounded monthly, computed from the date each excess payment should have been paid through the date of payment to the retired member or beneficiary.

3. If the retired member is living, ASRS shall pay the lump sum payment to the member. If the member is deceased and is survived by a beneficiary who is then living and receiving a monthly benefit on account of the deceased member, ASRS shall pay the lump sum payment to



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the beneficiary. The payment to the beneficiary shall include the recomputed amount that is payable pursuant to this section and that would have been paid to the member through the date of the member's death plus the recomputed amount that is payable pursuant to this section and that would have been payable to the beneficiary from the member's date of death. Section 38-770 applies to a payment to a member or the member's beneficiary who is the surviving spouse of the member, if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

4. With respect to a beneficiary who is a survivor of a deceased nonretired member who would have been entitled to benefits under this section and who elected a lump sum distribution of the survivor benefit that was payable on the death of the nonretired member, ASRS shall pay the recomputed amount in a lump sum to the beneficiary. If the beneficiary is the surviving spouse of the member, section 38-770 applies to the payment.

5. Effective on July 1, 1999, ASRS shall increase the member's or beneficiary's monthly and annual benefit to the recomputed amount. After that adjustment, ASRS shall adjust the member's or beneficiary's annual benefit as otherwise provided under the defined contribution program administered by ASRS.

H. Before July 1, 2002, the employer of each nonretired or retired member or deceased member who has a beneficiary entitled to adjustments and payments pursuant to subsections E and G of this section for periods of a member's employment before July 1, 1999 shall pay to ASRS in one or more installments those amounts required by ASRS to make the recomputations and adjustments pursuant to this section. ASRS shall determine the amount to be paid by the employer to ASRS as of July 1, 1999, plus interest at the rate of eight per cent a year, compounded monthly, from July 1, 1999 through the date the payment is made by the employer to ASRS. Any payments by the employer shall first be applied to accrued and unpaid interest and then to the amount to be paid by the employer to ASRS. ASRS shall allocate the payment to the assets maintained under the defined contribution program administered by ASRS. When determining the amounts required to be paid by employers for the recomputations and adjustments pursuant to this section, ASRS first shall transfer on July 1, 1999 from the assets maintained by ASRS under the defined benefit program established by this article to the assets maintained by ASRS under the defined contribution program administered by ASRS an amount equal to the sum of the defined benefit program equity balances of the retired and nonretired members or their beneficiaries whose benefits are transferred from the defined benefit program to the defined contribution program pursuant to this section, except that the amount transferred for any member or beneficiary shall not be more than the amount required to fund the recomputations and adjustments required by this section for the member or beneficiary. The defined benefit program equity balance for a member or beneficiary of a deceased member shall equal the sum of the member's employee and employer account balances on the earlier of June



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30, 1999 or the member's retirement or death, less the monthly annuity payments to a retired member or beneficiary, plus the earnings on the average balance of that amount for a plan year.

I. If a member retired before July 1, 1999, elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2 and did not make all contributions pursuant to section 38-771, subsection E because of the limitations prescribed in section 38-747, subsection E, the member has the option of receiving the employer contributions prescribed in subsection C, paragraphs 3 and 5 of this section in a lump sum payment. If the retired member elects to receive a lump sum payment, ASRS shall pay the amount on or before July 1, 2000 and the amount shall be deducted from the member's account when computing the annuity benefits to which the member is otherwise entitled pursuant to this section. In no case shall the payment under this subsection duplicate the payment under subsection G of this section. Section 38-770 applies to a payment to a member under this subsection if the payment is substantially larger or smaller than the monthly benefit payable by ASRS to the member.

J. Contributions made to ASRS by a member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall not exceed, in any one limitation year, the limits prescribed in section 38-747, subsection E. If for any reason the member and applicable employer contributions made pursuant to subsection F of this section would at the time the contributions are due, taking into account other annual additions due to ASRS for the limitation year, exceed the limits prescribed in section 38-747, subsection E, the amount to be paid by the member and the member's employer pursuant to subsection F of this section, other than employer contributions required pursuant to subsections G and H of this section, shall be proportionately reduced and the reduction shall be carried into the succeeding limitation year and paid by the member and the member's employer within thirty days after the beginning of that limitation year, unless the limits prescribed in section 38-747, subsection E would again be exceeded. If the limits are exceeded again, the procedure prescribed in this subsection shall be repeated until all of the contributions are made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires before making all contributions pursuant to this section because of the limitations prescribed in section 38-747, subsection E, the member's benefits pursuant to this section shall be computed only with reference to the contributions actually made. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

K. Unless otherwise provided in this section, a member who receives retirement benefits pursuant to this section and section 38-771 is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:



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1. A member who attains sixty-five years of age may retire and, on application, shall receive a life annuity derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement.

2. If a retired member who is receiving retirement benefits pursuant to this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.

3. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the annuity payments from the member's prior service, if any, together with a life annuity derived from the member's retirement account as provided in paragraph 1 of this subsection, the actuarial equivalent of those retirement benefits under one of the options established by the board.

4. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, may receive a life annuity derived from the actuarial equivalent of the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity shall be determined and paid in the manner set forth in paragraph 1 of this subsection.

5. In lieu of the retirement benefits pursuant to paragraph 4 of this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.

6. If a retired member who is receiving retirement benefits pursuant to this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more a week, the member's retirement benefit payments pursuant to this section are suspended until the member terminates employment. On return to employment, the member shall accrue benefits pursuant to this section, unless the member elects to be covered by the defined benefit program established by this article. If a formerly retired member elects to be covered by the defined benefit program established by this article, the formerly retired member shall be an active member in the defined benefit program with respect to all service performed after the member's return to work and shall not accrue additional benefits pursuant to this section. Notwithstanding the other provisions of this paragraph, if a retired member begins or returns to employment as an elected official or to any other type of service or employment that does not



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require the retired member to begin active membership in the defined contribution program administered by ASRS or the defined benefit program established by this article, the payment of retirement benefits pursuant to this section shall not be terminated, withheld or interrupted because of beginning or returning to the service or employment or holding the elected office, unless the formerly retired member actually elects to recommence active participation in the defined benefit program established by this article or pursuant to this section.

7. On termination of employment of a retired member previously receiving retirement benefits pursuant to this section, ASRS shall reinstate the member's retirement benefits pursuant to this section and, on reinstatement of retirement benefits, the benefit shall be recomputed on the basis of the member's attained age and shall be adjusted for retirement benefits previously received and additional contributions, interest and supplemental credits accrued during the period of employment. On this reinstatement of retirement benefits, if the member elected to be covered by the defined benefit program established by this article on the member's return to employment, the member is also entitled to receive retirement benefits pursuant to the defined benefit program established by this article for the credited service earned by the member after the member's active membership in the defined benefit program established by this article began.

L. ASRS shall handle all retirement accounts of members who elect retirement benefits provided pursuant to this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits pursuant to this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

M. The receipt of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

N. The board may administer and interpret this section in order to prevent any duplication of benefits provided by ASRS and the defined contribution program administered by ASRS and to provide all eligible members and beneficiaries with the benefits they are entitled to under the laws of this state.

O. For purposes of this section:



1. **"Beneficiary"** means the individual designated by the member in writing on forms approved by ASRS to receive benefits pursuant to this article after the death of the member.

2. **"Creditable service"** means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

3. **"Member's employer"** means an employer who compensated the member during a period when the member's contributions were less than seven per cent.

4. **"Pension"** means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.

5. **"Prior service"** means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.

6. **"Prior service credits"** means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.

7. **"Retirement account"** means the combined member and employer contributions with applicable interest and supplemental credits on the contributions as computed pursuant to subsection C of this section.

8. **"Service"** means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave, including military leave, provided employment has not been terminated at the commencement of the leave period and employment is state service for retirement purposes or service for any political subdivision establishing a defined contribution program administered by ASRS.

*As added by Laws 1999, Chapter 266, §3. Retroactively effective to July 1, 1999, if approved by the US. Internal Revenue Service. Note: There were two versions of §38-771.01 passed during the 1999 Legislative session. The version of §38-771.01 amended by Laws 1999 Chapter 327, §17 is repealed by Laws 2000 Chapter 315, §2. As amended by Laws 2000 Chapter 315, §3.*

## **38-772. Prior service under defined contribution program administered by ASRS; definitions**

A. Amounts required of employers as provided in section 38-737, subsections A and B are in addition to any payments required of employers on behalf of prior service credits under the defined contribution program administered by ASRS arising from members of ASRS. Payments



made to ASRS on behalf of members with those prior service credits shall reduce by that amount the payments required to be paid to the defined contribution program administered by ASRS for those prior service credits.

B. Notwithstanding section 38-757, subsection B, any prior service credits to which the member was entitled under the defined contribution program administered by ASRS shall be added to the product of section 38-757, subsection B, paragraphs 1 and 2.

C. For the purposes of this section:

1. **"Prior service"** means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

2. **"Prior service credits"** means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a retirement benefit.

*Originally A.R.S. §38-781.05. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §15; Laws 1974, Ch. 167, §3; Laws 1978, Ch. 54, §2; Laws 1984, 1<sup>st</sup> S.S., Ch. 12, §2; Laws 1989, Ch. 310, §3; Laws 1992, Ch. 320, §9; Laws 1993, Ch. 2<sup>nd</sup> S.S., Ch. 3, §4; Laws 1994, Ch. 356, §9; Laws 1995, Ch. 32, §14.*

## **38-773 Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definitions**

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations order is acceptable under this section, the board shall notify the member and the named alternate payee of its acceptance of the domestic relations order and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.





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2. The name and last known mailing address of each alternate payee covered by the order.

3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.

4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.

2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.

2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. For the purposes of this section:

1. **"Domestic relations order"** means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.





(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. **"Relative of the divorced member's former spouse"** means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

*Former §38-773 was repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1995, Ch. 134, §11.*

### **38-774. Excess benefit arrangement**

A. A separate unfunded governmental excess benefit arrangement is established outside of and apart from the trust fund established by section 38-712 to pay members benefits that are otherwise payable by ASRS and that exceed the limitations on benefits imposed by section 415 of the internal revenue code. The board shall administer this excess benefit arrangement as a qualified governmental excess benefit arrangement pursuant to section 415(m) of the internal revenue code.

B. The board may adopt rules to implement this section subject to the following:

1. Benefits under this section are subject to section 38-773 and section 38-791, subsections D and F and are exempt from execution to the same extent as provided in section 38-792.

2. Contributions to this arrangement are not held in trust and shall not be commingled with other monies of ASRS.

C. A member is entitled to a monthly benefit under this section in an amount equal to the amount that the member's benefit that is payable by ASRS has been reduced by the limitation on benefits imposed by section 38-769 and section 415 of the internal revenue code. The benefit that is payable by this arrangement shall be paid at such time or times and in such form as the benefit under ASRS would be paid.

D. The benefit that is payable under this section shall be paid with employer contributions that would otherwise be made to ASRS under section 38-737. In lieu of the employer contributions being paid to the trust fund established by section 38-712, an amount



determined by ASRS as necessary to pay benefits under this section shall be paid on a monthly basis to a separate account established by the board for this arrangement and may include amounts needed to pay reasonable and necessary expenses of this arrangement. The director may invest the monies in this account in suitable short-term investments between receipt of the monies and disbursement of the monies. The amount shall be paid to the account at least fifteen days before a disbursement is to be made under this section.

E. A member shall not directly or indirectly elect to defer compensation to purchase benefits provided under this section.

F. This section shall not be construed as requiring an employer or ASRS to purchase any investment or any contract to secure any obligations under this section. If an employer or ASRS purchases an investment or contract that the employer or ASRS earmarks to pay benefits under this section, title to and beneficial ownership of the investment or contract remain at all times in the employer or ASRS, and the member and the member's beneficiaries, if any, do not have any proprietary interest in any specific assets of the employer or ASRS. Any rights of the member and the member's beneficiaries, if any, to payment of any amounts under this section shall be those of general unsecured creditors of the employer or ASRS. This section and any action taken pursuant to this section by the employer or ASRS do not create and shall not be construed to create an irrevocable trust of any kind.

*Former §38-774 was repealed by Laws 1995, Ch. 32, §13. The current version was added by Laws 1998, Ch. 155, §4.*

## Other Benefits

### **38-781. Long-term disability program; benefits**

A. The board shall establish a program of long-term disability benefits for ASRS members as provided by this section. The program is known as the LTD program.

B. The board shall adopt the specific provisions of the LTD program subject to the following limitations:

1. Except as provided in paragraph 7 of this subsection, monthly benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences, reduced by:

(a) Sixty-four percent of social security disability benefits that the member or the member's dependents are eligible to receive or, if less, the maximum allowable percentage of



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social security disability benefits that may be used to reduce otherwise payable benefits as prescribed by section 401 of the internal revenue code.

(b) Eighty-three percent of social security retirement benefits that the member is eligible to receive or, if less, the maximum allowable percentage of social security retirement benefits that may be used to reduce otherwise payable benefits as prescribed by section 401 of the internal revenue code.

(c) All of any workers' compensation benefits.

(d) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's total disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(e) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payment for sick leave.

(f) Fifty percent of any salary, wages, commissions or similar pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. Monthly benefits are not payable until a member has been totally disabled for a period of six consecutive months.

3. Monthly benefits are not payable to a member who is receiving disability or retirement benefits from the ASRS.

4. Monthly benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.



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(d) An injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been an ASRS member for twelve continuous months nor to a member who is employed by an employer as of June 30, 1988. For the purposes of this subdivision, "received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

5. Monthly benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to be totally disabled.

(b) The date the member ceases to be under the direct care of a doctor or refuses to undergo any medical examination requested by the insurance company selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be an ASRS member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age

(iii) The month following attainment of seventy-five years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

6. Monthly benefits are payable under the LTD program only for disabilities that commence on or after July 1, 1988.

7. The minimum benefit for a member who is entitled to receive benefits under the LTD program is fifty dollars per month.

8. For the purposes of this subsection, "totally disabled" means:



(a) During the first thirty months of a period of disability, that the member is unable to perform all duties of the position held by the member when the member became totally disabled.

(b) For a member who has received monthly benefits for twenty-four consecutive months, that a member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience.

C. Members are eligible to receive the benefits and payments described in subsection B, paragraph 1, and the reductions provided by subsection B, paragraph 1 apply even though the member is reasonably qualified by education, training or experience.

1. For primary or dependent social security benefits, the members are eligible for the benefits until the benefits are actually awarded, or if the benefits are denied, until notice of the denial of the appeal of the first denial is received.

2. For benefits and payments from any other source provided in subsection BB, paragraph 1, the members are eligible for the benefits if it is reasonable to believe that the benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

D. The board shall enter into a contract with an insurance company to administer the LTD program and to determine eligibility for benefits under the LTD program.

E. A member who receives monthly benefits from the LTD program is entitled to receive service credit for the period of disability to the member's normal retirement date, except that the member's total credited service shall not exceed the greater of twenty-five years or the total years of service credited to the member on the commencement of disability.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents**

A. The board shall establish group health and accident coverage for eligible retired and disabled members and their dependents. Eligible retired and disabled members are those members who are receiving retirement benefits from ASRS or long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter and who are not eligible to obtain health and accident insurance through their former employer. If an insured retired or disabled member dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving



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dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired and disabled members of ASRS who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provision for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The fund manager of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered



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dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783..

G. Retired or disabled members who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.



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H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

*Originally A.R.S. §38-781.25. As amended by Laws 1990, Ch. 235, §3; Laws 1991, Ch. 170, §6; Laws 1992, Ch. 320, §16; Laws 1994, Ch. 356, §15; Laws 1995, Ch. 32, §14, Ch. 134, §13; Laws 1997, Ch. 291, §4; Laws 1998, Ch. 236, §3; Laws 2001, Ch. 136, §18 (SB 1117).*

Double enactment: There was a double enactment of § 38-783. ASRS did not try to meld them because 38-783, as amended by Chapter 376 is repealed from and after June 30, 2003.

**38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions**

A. Subject to subsection J of this section, the board shall pay from ASRS assets part of the single coverage premium of any group health and accident insurance for each retired or disabled member of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in any other health and accident insurance coverage provided or administered by an employer. The board shall pay:

1. Up to ninety-five dollars per month for a retired or disabled member of ASRS who is not eligible for medicare and who has ten or more years of credited service.
2. Up to sixty-five dollars per month for each retired or disabled member of ASRS who is eligible for medicare and who has ten or more years of credited service.

B. Subject to subsection J of this section, the board shall pay from ASRS assets part of the family coverage premium of any group health and accident insurance for a retired or disabled member of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. Payment under this subsection is in the following amounts:

1. Up to one hundred seventy-five dollars per month if the retired or disabled member of ASRS and one or more dependents are not eligible for medicare.
2. Up to one hundred fifteen dollars per month if the retired or disabled member of ASRS and one or more dependents are eligible for medicare.
3. Up to one hundred forty-five dollars per month if either:





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(a) The retired or disabled member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired or disabled member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired or disabled member of ASRS with less than ten years of credited service and a dependent of such a retired or disabled member who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in any other health and accident coverage provided or administered by an employer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety per cent.
2. 8.0 to 8.9 years of credited service, eighty per cent.
3. 7.0 to 7.9 years of credited service, seventy per cent.
4. 6.0 to 6.9 years of credited service, sixty per cent.
5. 5.0 to 5.9 years of credited service, fifty per cent.
6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a retired or disabled member of ASRS.

E. Through June 30, 2003, the board shall pay an insurance premium benefit for each retired or disabled member of ASRS who is eligible for a premium benefit payment pursuant to subsection A of this section and who lives in a nonservice area as follows:

1. Up to three hundred dollars per month for a retired or disabled member of ASRS who is not eligible for medicare and who has ten or more years of credited service.
2. Up to one hundred seventy dollars per month for a retired or disabled member of ASRS who is eligible for medicare and who has ten or more years of credited service.

F. Through June 30, 2003, the board shall pay from ASRS assets part of the family coverage premium of any group health and accident insurance coverage for a retired or disabled



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member of ASRS who is eligible for a premium benefit payment pursuant to subsection B of this section and who lives in a nonservice area as follows:

1. Up to six hundred dollars per month if the retired or disabled member of ASRS and one or more dependents are not eligible for medicare.

2. Up to three hundred fifty dollars per month if the retired or disabled member of ASRS and one or more dependents are eligible for medicare.

3. Up to four hundred seventy dollars per month if either:

(a) The retired or disabled member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired or disabled member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

G. A retired or disabled member of ASRS who is enrolled in a managed care program in a nonservice area is not eligible for the payment prescribed in subsection E or F of this section if the member terminates coverage under the managed care program.

H. Through June 30, 2003, a retired or disabled member of ASRS may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired or disabled member's employer if that employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired or disabled member.

I. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of benefits under this section unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section are satisfied, the board shall return any amount remaining in the account to the employer.

J. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.



2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five per cent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.

3. The board shall deposit the benefits provided by this section in the account.

4. The contributions by the employer to the account shall be reasonable and ascertainable.

K. For the purposes of this section:

1. **"Account"** means the separate account established pursuant to subsection E I of this section.

2. **"Credited service"** includes prior service.

3. **"Nonservice area"** means an area in this state in which ASRS pursuant to section 38-782, the department of administration pursuant to section 38-651.01 or any employer does not provide or administer a health care services organization program, excluding any preferred provider organization program or individual health indemnity policy, for which the retired or disabled member of ASRS is eligible.

4. **"Prior service"** means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

*This section is effective retroactively from and after June 30, 2001. As amended by Laws 1997 Chapter 280, §18, Eff. July 21, 1997. As amended by Laws 2001 Chapter 376, §1 (SB 1107).*

## Miscellaneous

### **38-791. Assurances and liabilities**

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any employee to continue in the employment of an employer.



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3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any ASRS assets on termination of the member's employment or otherwise, except as provided from time to time by ASRS, and then only to the extent of the benefits payable to the member out of ASRS assets. All payments of benefits shall be made solely out of ASRS assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Payment of compensation less contributions as provided in this article fully discharges any claim or demand for the service rendered by a member during the period covered by the payment, except with respect to benefits provided under this article.

D. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, contribution, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, contribution, earning or credit under this article is void. ASRS is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, contribution, earning or credit under this article.

E. Neither the employers, the board nor any member of the board guarantees the fund established by section 38-712 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

F. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

*Originally, A.R.S. §38-781.16. As amended by Laws 1970, Ch. 134, §2; Laws 1972, Ch. 51, §20; Laws 1989, Ch. 267, §13; Laws 1995, Ch. 32, §14, eff. March 30, 1995.*

### **38-792. Exemptions from execution, attachment and taxation; exception**

A. The benefits and annuities, the member and employer contributions and the securities in ASRS accounts provided for in this article are not subject to execution or attachment and are



nonassignable except as specifically provided in this article. The member and employer contributions and the securities in ASRS accounts are exempt from state, county and municipal income taxes. Contributions that are withdrawn after December 31, 1974 by a public officer or employee from the accounts of ASRS and that are not received as benefits from ASRS and benefits and annuities received by a public officer or employee from ASRS after December 31, 1988 are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits and annuities are not subject to execution or attachment and are nonassignable.

*Originally, A.R.S. §§38-762 and 38-781.22, as added by Laws 1953, Ch. 128, §22. As amended by Laws 1970, Ch. 134, §2, and Ch. 136, §19; Laws 1972, Ch. 51, §§13, 23; Laws 1975, Ch. 48, §§2, 3; Laws 1989, Ch. 312, §§6, 7; Laws 1995, Ch. 32, §14, eff. March 30, 1995.*

### **38-793. Violation; classification**

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of ASRS with an intent to defraud ASRS is guilty of a class 6 felony.

*Originally A.R.S. §§38-763 and 38-781.32, as added by Laws 1953, Ch. 128, §23. As amended by Laws 1970, Ch. 134, §2; Laws 1978, Ch. 201, §§691, 692; Laws 1995, Ch. 32, §14, eff. March 30, 1995.*

### **38-794. Reservation to legislature**

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

*Originally A.R.S. §§38-764 and 38-781.33, as added by Laws 1953, Ch. 128, §24. As amended by Laws 1970, Ch. 134, §2; Laws 1995, Ch. 32, §14, eff. March 30, 1995.*



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## ARTICLE 2.1

### Long-Term Disability Program

#### **38-797. Definitions**

In this article, unless the context otherwise requires:

1. **"ASRS"** means the Arizona state retirement system established by article 2 of this chapter.

2. **"Assets"** means the accumulated resources of the LTD program.

3. **"Board"** means the ASRS board established pursuant to section 38-713.

4. **"Compensation"** means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes. Compensation does not include:

(a) Lump sum payments on termination of employment for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.



5. **"Depository"** means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.

6. **"Employer"** means:

(a) This state.

(b) Participating political subdivisions.

7. **"Employer contributions"** means all amounts paid into the LTD program by an employer.

8. **"Fiscal year"** means the period from July 1 of any year to June 30 of the following year.

9. **"LTD program"** means the long-term disability program established by this article.

10. **"Member"** has the same meaning prescribed in section 38-711.

11. **"Monthly compensation"** means one-twelfth of a member's annual compensation paid and payable in the fiscal year during which a member becomes disabled.

12. **"Normal retirement date"** means the earliest of the following:

(a) A member's sixty-fifth birthday.

(b) A member's sixty-second birthday and completion of at least ten years of credited service.

(c) The first day that the sum of a member's age and years of total credited service equals eighty.

13. **"Political subdivision"** means any political subdivision of this state.

14. **"State"** means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

*As added by Laws 1995, Ch. 134, §14, eff. April 17, 1995. As amended by Laws 1997, Ch. 280, §19.*



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**38-797.01. LTD program**

A. A long-term disability program is established.

B. The program is known as the LTD program.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.02. LTD trust fund**

A. A LTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source.

C. Custody, management and investment of the LTD fund are as prescribed by this article and article 2 of this chapter.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.03. ASRS board; personnel; duties**

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

C. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.04. Eligibility**

All members are subject to this article and shall participate in the LTD program.





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*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.05. Employer and member contributions**

A. Beginning July 1, 1996, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 1996, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate equal to the interest rate assumption approved by the board for actuarial equivalency pursuant to article 2 of this chapter. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38-762.



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*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995. As amended by Laws 2001, Ch. 136, §20 (SB 1117).*

**38-797.06. Contribution rate; annual report; definition**

A. The board shall:

1. After consulting with its actuary, determine a biennial period contribution rate based on the LTD program experience of the employers and the costs of administering the LTD program.

2. Annually report the current contribution rate to the governor, the president of the senate, the speaker of the house of representatives and each participating political subdivision.

B. For the purposes of this section, "biennial period" means the two year period beginning on July 1 of an odd-numbered year and ending on June 30 of the next odd-numbered year.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995. As amended by Laws 2000, Ch. 132, §3.*

**38-797.07. LTD program benefits; limitations; definitions**

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 7, monthly benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences, reduced by:

(a) Sixty-four per cent of social security disability benefits that the member or the member's dependents are eligible to receive.

(b) Eighty-three per cent of social security retirement benefits that the member is eligible to receive.

(c) All of any workers' compensation benefits.

(d) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's total disability.



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(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(e) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave.

(f) Fifty per cent of any salary, wages, commissions or similar pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. Monthly benefits are not payable until a member has been totally disabled for a period of six consecutive months.

3. Monthly benefits are not payable to a member who is receiving retirement benefits from ASRS.

4. Monthly benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) An injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an employee of an employer for twelve continuous months.

(ii) Is employed by an employer as of June 30, 1988.

5. Monthly benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to be totally disabled.

(b) The date the member ceases to be under the direct care of a doctor or refuses to undergo any medical examination requested by the insurance company selected by the board to administer the LTD program.



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(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

6. Monthly benefits are payable under the LTD program only for disabilities that commence on or after July 1, 1988.

7. The minimum benefit for a member who is entitled to receive benefits under the LTD program is fifty dollars per month.

8. Members are eligible to receive the benefits and payments described in paragraph 1, and the reductions provided by paragraph 1 apply even though the benefits are not actually paid as follows:

(a) For primary or dependent social security benefits, the members are eligible for the benefits until the benefits are actually awarded, or if the benefits are denied, until notice of the denial of the appeal of the first denial is received.

(b) For benefits and payments from any other source provided in paragraph 1, the members are eligible for the benefits if it is reasonable to believe that the benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

9. A member shall be considered totally disabled if:

(a) During the first thirty months of a period of disability, the member is unable to perform all duties of the position held by the member when the member became totally disabled.



(b) For a member who has received monthly benefits for twenty-four consecutive months, that a member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled benefits prescribed in paragraph 1 of this section.

B. A member who receives monthly benefits from the LTD program is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until benefits cease to be payable, except that for a member who receives monthly benefits from the LTD program on or after June 30, 1999 the number of years of service credited to the member's retirement account during the period the member receives LTD benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. For the purposes of this section:

1. **"Received medical treatment"** means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

2. **"Social security"** and **"social security disability"** includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231u).

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995. As amended by Laws 1987, Ch. 112, §1; Laws 1988, Ch. 183, §1; Laws 1992, Ch. 145, §1; Laws 1994, Ch. 356, §16; Laws 1996, Ch. 185, §18; Laws 1999, Ch. 146, §1; Laws 1999, Ch. 327, §18; Laws 2001, Ch. 136, §21 (SB 1117).*

### **38-797.08. Errors; benefit recomputation**

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*



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**38-797.09. Facility of payment**

In the case of incapacity of a member receiving LTD program benefits, or in the case of any other emergency as determined by the board, the board may make LTD program benefit payments on behalf of the member to another person or persons the board determines to be lawfully entitled to receive payment. The payment is payment for the account of the member and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or the LTD program, or both, under or in connection with the LTD program.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.10. Assurances and liabilities**

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.
2. A right of any member to continue in the employment of an employer.
3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.



D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38-797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.11. Exemptions from execution, attachment and taxation; exception**

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.12. Violation; classification**

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with intent to defraud the LTD program is guilty of a class 6 felony.

*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995.*

**38-797.13. Reservation to legislature**

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.



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*Added by Laws 1995, Ch. 134, §14, eff. April 17, 1995*

**38-797.14. Liquidation of LTD program**

If the legislature determines that the LTD program is no longer to be operated for the purposes set forth in this article, any monies remaining in the LTD trust after paying all liabilities of the trust or after making adequate provision for paying those liabilities revert to the general funds of the employers that were making contributions to the LTD program at the time the legislature terminates the LTD program. The reverted monies shall be prorated according to the gross amount of contributions made by the employers to the LTD program.

*As added by Laws 1997, Ch. 280, §20, Eff. July 21, 1997.*





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## ARTICLE 8

### Supplemental Defined Contribution Plans

#### 38-951. Definitions

In this article, unless the context otherwise requires:

1. **"Board"** means the Arizona state retirement system board established by section 38-713.
2. **"Eligible group"** means any of the following:
  - (a) The Arizona state retirement system established by article 2 of this chapter.
  - (b) The elected officials' retirement plan established by article 3 of this chapter.
  - (c) The public safety personnel retirement system established by article 4 of this chapter.
  - (d) The corrections officer retirement plan established by article 6 of this chapter.
  - (e) An optional retirement program established pursuant to section 15-1451 or 15-1628.
3. **"Employer"** means an agency or department of this state or an agency or department of a political subdivision of this state that has employees in an eligible group.
4. **"Fund manager"** means the fund manager established by section 38-848.
5. **"Plan"** means a supplemental defined contribution plan authorized by this article.

#### 38-952. Supplemental defined contribution plan; establishment; administration

A. The board, employer or fund manager of an eligible group may establish, administer, manage and operate a supplemental defined contribution plan. the fund manager may establish a single supplemental defined contribution plan for all contributing members of the retirement system and plans it administers.



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B. If a board, employer or fund manager establishes a supplemental defined contribution plan:

1. The board may delegate authority to implement the plan to its director appointed pursuant to section 38-715.

2. The employer may delegate authority to implement the plan to its internal benefits administrator or designee.

3. The fund manager may delegate authority to implement the plan to the administrator employed pursuant to section 38-848, subsection k, paragraph 6.

4. The board, employer or fund manager may:

(a) Employ services it deems necessary, including legal services, for the operation and administration of the plan.

(b) Administer the plan through contracts with multiple vendors.

(c) Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plan.

(d) For the purposes of this article, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.

C. A supplemental defined contribution plan shall be designed to be a qualified governmental plan under section 401(a) of the internal revenue code. The legislature intends that a supplemental defined contribution plan is a qualified plan under section 401 of the internal revenue code, as amended, or successor provisions of law, and that a plan is exempt from taxation under section 501 of the internal revenue code. The board, employer or fund manager may adopt any additional provisions to a plan that are necessary to fulfill this intent.

D. Although designated as employee contributions, all employee contributions made to a plan shall be picked up and paid by the employer in lieu of contributions by the employee. The contributions picked up by an employer may be made through a reduction in the employee's salary or an offset against future salary increases, or a combination of both. An employee participating in a plan does not have the option of choosing to receive the contributed amounts directly instead of the employer paying the amounts to the plan. It is intended that all employee contributions that are picked up by the employer as provided in this subsection shall be treated as employer contributions under section 414(h) of the internal revenue code, shall be excluded from



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employees' gross income for federal and state income tax purposes and are includable in the gross income of the employees or their beneficiaries only in the taxable year in which they are distributed. The specified effective date of the pickup pursuant to this subsection shall not be before the date the plan receives notification from the internal revenue service that pursuant to section 414(h) of the internal revenue code the employee contributions picked up shall not be included in gross income for income tax purposes until the time that the picked up contributions are distributed by pension payments. Until notification is received, any contributions made under section 38-953, subsection D are made with after-tax contributions.

### **38-953. Supplemental option**

A. A supplemental defined contribution plan is in addition to and does not replace an employee's existing state defined benefit retirement plan.

B. Except as provided in subsection C, any contributing member of an eligible group that establishes a supplemental defined contribution plan as authorized by this article may participate in the supplemental defined contribution plan. Participation in the plan authorizes the member's employer to make reductions or deductions in the member's salary. The employer shall initiate salary reductions or deductions for the plan as directed by each employee participating in the plan and shall submit any reports required by the plan. Any salary deferred under the plan shall be included as regular compensation or salary for the purpose of computing the retirement and pension benefits earned by any employee participating in the plan.

C. If the Arizona state retirement system establishes a supplemental defined contribution plan and an employer member of the Arizona state retirement system elects to participate in the supplemental defined contribution plan, any employee member of the employer may participate in the supplemental defined contribution plan.

D. If an employee elects to participate in a plan pursuant to this subsection, the employee shall contribute an amount equal to at least one per cent of the employee's gross salary. An election to participate in a plan is irrevocable and shall be for a period of at least one-year. An employee may annually increase or decrease the employee contributions in increments of one per cent up to the maximum allowed by law. An employee is not required to contribute under this subsection in order to qualify for an employer match under subsection E. The employer match may accrue from any program established by the employer.

E. An employer may elect to match the contributions made by the employee pursuant to subsection D or any other program established by the employer under the internal revenue code, including any plan established under internal revenue code section 401(a), 403(b) or 457, at a



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rate determined by the employer. The rate of the employer match shall be determined at the beginning of that employer's budget cycle and shall terminate at the end of that budget cycle.

**38-954. Vesting**

A. Employee contributions and earnings on employee contributions are immediately vested.

B. Employer matching contributions, if any, and the earnings on employer matching contributions are vested and the employee is entitled to receive employer matching contributions and earnings on those contributions as follows:

1. If the employee has less than one year of credited service in an eligible group, zero per cent.

2. If the employee has at least one year but less than two years of credited service in an eligible group, twenty per cent.

3. If the employee has at least two years but less than three years of credited service in an eligible group, forty per cent.

4. If the employee has at least three years but less than four years of credited service in an eligible group, sixty per cent.

5. If the employee has at least four years but less than five years of credited service in an eligible group, eighty per cent.

6. If the employee has at least five years of credited service in an eligible group, one hundred per cent.

C. All nonvested employer contributions and earnings on those contributions may be used to pay for the administrative costs of the plan.

*Article 8 added by Laws 2001 Chapter 280, § 9 (SB 1100), and Laws 2001 Chapter 380, §15 (SB 1295).*



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## Related Statutes

### **11-1437. Transfer of county employees**

#### A. The operating agreement:

1. Shall include provisions to ensure that all employees of the county health system are considered for employment by the nonprofit corporation.

2. May include provisions with respect to the transfer of county health system employees, including appropriate arrangements for hiring preferences, employee seniority, rates of pay, benefits, accrued leave and retirement benefits and for financial adjustments and settlements.

B. The nonprofit corporation shall allow employees chosen to perform services under the operating agreement who have ten or more years of credited service with the county health system as of the transfer date and employees who are within four years of becoming eligible for retirement benefits under the Arizona state retirement system as of the transfer date to remain at their option as employees of the sponsoring county on loan to the corporation for purposes of membership in the Arizona state retirement system for up to four years. The corporation shall pay all costs incurred by the county to implement this subsection. The sponsoring county may pay any amounts received from the corporation under this subsection to the Arizona state retirement system regardless of whether the county budgeted the expenditure pursuant to section title 42, chapter 17, article 3. All amounts received by the county from the corporation under this subsection are considered to be held by the county as a custodian pursuant to article IX, section 20, subsection (3), paragraph (d), subdivision (iii), Constitution of Arizona.

C. This chapter shall not be construed to require the nonprofit corporation to employ any employee of the county or the county health system.

*As added by Laws 1995 Chapter 111, §1, eff. April 17, 1995. As amended by Laws 1998, Ch. 1, §39, eff. January 1, 1999.*

### **15-187. Charter schools; teachers; employment benefits**

A. A teacher who is employed by or teaching at a charter school and who was previously employed as a teacher at a school district shall not lose any right of certification, retirement or salary status or any other benefit provided by law, by the rules of the governing board of the school district or by the rules of the board of directors of the charter school due to teaching at a charter school on the teacher's return to the school district.



B. A teacher who is employed by or teaching at a charter school and who submits an employment application to the school district where the teacher was employed immediately before employment by or at a charter school shall be given employment preference by the school district if both of the following conditions are met:

1. The teacher submits an employment application to the school district no later than three years after ceasing employment with the school district.
2. A suitable position is available at the school district.

C. A charter school that is sponsored by a school district governing board, the state board of education or the state board for charter schools is eligible to participate in the Arizona state retirement system pursuant to title 38, chapter 5, article 2. The charter school is a political subdivision of this state for purposes of title 38, chapter 5, article 2.

*As added by Laws 1994, Ch. 2, §2. As amended by Laws 1995, Ch. 273, §3, Eff. July 13, 1995.*

#### **15-1444. Powers and duties**

A. Except as otherwise provided, the district board shall:

1. Maintain each community college for a period of not less than eight months in each year and, if the funds of the district are sufficient, maintain each community college for a longer period.
2. Enforce the courses of study prescribed by the state board.
3. Visit each community college and examine carefully into its management, conditions and needs.
4. Exclude from each community college all books, publications or papers of a sectarian, partisan or denominational character intended for use as textbooks.
5. Appoint and employ a chancellor or chancellors, vice-chancellors, a president or presidents, vice-presidents, deans, professors, instructors, lecturers, fellows and such other officers and employees it deems necessary. Notwithstanding subsection B, paragraph 3 of this section and section 15-1424, subsection B, paragraph 4, the district board may enter into employment contracts with chancellors, vice-chancellors and presidents for a duration of more than one year but not more than five years.



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6. Determine the salaries of persons it appoints and employs.

7. Remove any officer or employee if in its judgment the interests of education in this state require the removal.

8. Award degrees, certificates and diplomas upon the completion of courses and curriculum as it deems appropriate.

9. Appoint, if it deems necessary, police officers who shall have the authority and power of peace officers. The police officers who have received a certificate from the Arizona peace officer standards and training board are eligible for membership in and benefits under either title 38, chapter 5, article 2 or the public safety personnel retirement system under title 38, chapter 5, article 4.

10. Receive, hold, make and take leases of and sell personal property for the benefit of the community colleges under its jurisdiction.

11. Obtain insurance against loss, to the extent it is determined necessary on community college buildings of the district, whether financed in whole or in part by state monies. The local district shall have an insurable interest in the buildings.

B. The district board may:

1. Administer trusts declared or created for the district and receive by gift or devise and hold in trust or otherwise property wheresoever located, and if not otherwise provided, dispose of the property for the benefit of the district, if, with respect to real property, the state board has consented to the disposition of the real property.

2. Lease real property, as lessor or as lessee, if authorized by the state board as provided in section 15-1424. If a district is the lessee, the lease may contain an option to purchase the property. The district board may adopt policies as are deemed necessary and may delegate in writing to the chancellor or president of the district, or their designees, all or any part of its authority to lease property under this paragraph. A district governing board shall not delegate the authority to execute a lease that exceeds one hundred thousand dollars per year. Any delegation by the district board pursuant to this paragraph may be rescinded in whole or in part at any time by the district board.

3. Contract, subject to the rules and limitations prescribed by the state board as provided in section 15-1424. The district board may adopt such policies as are deemed necessary and may delegate in writing to the chancellor or president of the district, or their designees, all or any part



of its authority to contract under this paragraph. Any delegation of authority under this paragraph may be rescinded by the district board at any time in whole or in part.

4. Construct, remodel and repair buildings subject to the rules prescribed by the state board as provided in section 15-1424.

5. Provide a plan or plans for employee benefits which may include optional retirement programs pursuant to section 15-1451, subsection A, which allow for participation in a cafeteria plan that meets the requirements of the United States internal revenue code of 1986.

C. From and after December 31, 1988, in a district whose boundaries encompass a vehicle emissions control area as defined in section 49-541 the district board shall require all out of county and out of state students to sign an affidavit at the time of course registration that the student's vehicle meets the requirements of section 49-542. From and after December 31, 1988, the district board on property under its jurisdiction within a vehicle emissions control area shall prohibit the parking of those vehicles which fail to comply with section 49-542.

*Added by Laws 1981, Ch. 1, §2, eff. Jan. 23, 1981. As amended by Laws 1981, Ch. 187, §2; Laws 1984, Ch. 232, §2; Laws 1985, Ch. 280, §2; Laws 1986, Ch. 297, §2; Laws 1987, Ch. 154, §2, eff. April 21, 1987, Ch. 360, §1, and Ch. 365, §6; Laws 1988, Ch. 218, §2; Laws 1990, Ch. 411, §1; Laws 1995, Ch. 284, eff. July 13, 1995; Laws 1996, Ch. 185, §1, eff. July 20, 1996; Laws 1998, Ch. 236, §2; Laws 1998, Ch. 236, §1; Laws 1999, Ch. 228, §1, Laws 2000, Ch. 144, §1, eff. July 18, 2000; Laws 2001, Ch. 251, §5.*

#### **15-1451. Optional retirement plans**

A. Pursuant to section 15-1444, subsection B, paragraph 5, a community college district board may establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for employees of the institutions under its jurisdiction as designated by the community college district board.

B. An optional retirement program established pursuant to this section shall:

1. Be designed to be a qualified governmental plan under section 401(a) of the internal revenue code.

2. Comply with all requirements of the internal revenue code applicable to governmental plans.

3. Be a qualified plan under section 401(a) of the internal revenue code.





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4. Apply for and maintain a current letter of determination issued by the United States internal revenue service.

5. Be a qualified pick-up plan as defined by section 414(h)(2) of the internal revenue code as confirmed by a private letter ruling issued by the United States internal revenue service.

6. Provide benefits through annuity contracts that are fixed or variable in nature or that are a combination of fixed and variable.

C. Eligible employees may elect to participate in an optional retirement plan established by the community college district board. The eligible employee shall make the election in writing and file the election with the Arizona state retirement system and the disbursing officer of the employing institution. The eligible employee shall make the election either:

1. Within thirty days of the employee's effective date of employment or,

2. If the employee is a member of the Arizona state retirement system on the date the optional retirement program becomes effective, within ninety days of the effective date of the optional retirement program.

3. Beginning on October 1, 2001, through December 31, 2001.

D. If an employee who is a member of the Arizona state retirement system elects to participate in an optional retirement program pursuant to subsection C of this section, the Arizona state retirement system shall transfer the employee's contributions to the Arizona state retirement system and interest as determined by the board of the Arizona state retirement system to the optional retirement program within the later of ninety days after the election or ninety days after receipt by the optional retirement program of a favorable letter of determination issued by the United States internal revenue service. If an eligible employee fails to make an election as provided in this subsection, the employee is deemed to have elected to participate in the Arizona state retirement system. The election to participate in an optional retirement program is irrevocable and constitutes a waiver of all benefits provided by the Arizona state retirement system. All eligible employees who elect to participate in an optional retirement program shall remain participants in the optional retirement program during the continuance of employment with the community college district.

E. The community college district board shall make contributions from public monies appropriated or any other monies available for this purpose on behalf of each participant in the optional retirement program in an amount that is at least equal to the employer contribution



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prescribed in title 38, chapter 5, article 2 but that is not more than the amount prescribed in section 15-1628, subsection C.

F. Subject to subsection G of this section, each community college district board that establishes an optional retirement program shall establish program provisions including:

1. Categories of employees that are eligible to elect to participate in the optional retirement program.

2. The employee contribution rate. This rate may be greater than the employee contribution rate prescribed in title 38, chapter 5, article 2.

3. A vesting period for employer contributions, if any. All employee contributions that are picked up by the employer are fully vested at all times.

4. Restrictions on benefits, except that the optional retirement program shall not allow a participant to withdraw employer contributions except as retirement income payable for life or to provide for loans on retirement income.

G. A community college district board may elect to provide health or long-term disability coverage to optional retirement program participants under separate benefit plans. The community college district board may allocate a portion of its employer contribution that would otherwise be made to the optional retirement program under subsection D of this section to the separate benefit plans to provide health or long-term disability coverage.

H. Community college district boards that establish an optional retirement program under this section may enter into intergovernmental agreements appointing a single administrator or designating a single community college district board to administer the optional retirement program. A community college district board may satisfy the requirements of this section by entering into an intergovernmental agreement with another community college district board to participate in that community college district's optional retirement program. The administration shall include, without limitation, the design and implementation of the plan document establishing the optional retirement program, compliance with the qualification requirements prescribed in subsection B of this section and such other duties that are not inconsistent with this section as may be delegated to the administrator pursuant to the intergovernmental agreements entered into among the community college district boards.

I. Although designated as employee contributions, all employee contributions made to an optional retirement program shall be picked up and paid by the community college district in lieu of contributions by the employee. The contributions picked up by a community college district



may be made through a reduction in the employees' salary or an offset against future salary increases, or a combination of both. The employees participating in the optional retirement program do not have the option of choosing to receive the contributed amounts directly instead of the community college district paying the amounts to the optional retirement program. It is intended that all employee contributions that are picked up by the community college district as provided in this subsection shall be treated as employer contributions under section 414(h) of the internal revenue code and shall be excluded from the employees' gross income for federal and state income tax purposes and are includable in the gross income of the employees or their beneficiaries only in the taxable year in which they are distributed.

J. A community college district board shall not be liable to any employee, retiree or other person for any reason relating to the community college district board's provision of or failure to provide for an optional retirement program or health or long-term disability coverage.

*Added by Laws 1995, Ch. 284, §1, eff. July 13, 1995. Amended by Laws 1996, Ch. 185, §1, eff. July 20, 1996; Laws 1998, Ch. 236, §2; Laws 1999, Ch. 327 (SB 11083), eff. August 6, 1999; Laws 2001, Ch. 136, §1 (SB 1117), Ch. 138, § 1 (SB 1155), Ch. 280, §1 (SB 1100), and Ch. 380, §1 (SB 1295).*

#### **15-1628. Powers and procedures pertaining to optional retirement programs**

A. The Arizona board of regents may establish optional retirement programs under which contracts providing retirement and death benefits may be purchased for members of the faculty and administrative officers of the institutions under its jurisdiction. The benefits to be provided for or on behalf of participants in the optional retirement program shall be provided through annuity contracts, fixed or variable in nature, or a combination thereof, or other retirement plans approved by the Arizona board of regents.

B. Elections to participate in the optional retirement programs shall be made as follows:

1. Eligible employees initially appointed on or after August 9, 1974 shall elect to become members of the Arizona state retirement system or to participate in an optional retirement program established by the Arizona board of regents. The election shall be made in writing and filed with the Arizona state retirement system and the disbursing officer of the employing institution and shall be effective as of the effective date of appointment. If an eligible employee fails to make an election as provided in this paragraph, the eligible employee shall be deemed to have elected membership in the Arizona state retirement system.

2. Eligible employees initially appointed before August 9, 1974 may elect to participate in the optional retirement programs. The election shall be made in writing and filed with the



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Arizona state retirement system and the disbursing officer of the employing institution on or before December 14, 1974, shall become effective as of January 1, 1975 and shall constitute a waiver of all benefits provided by the Arizona state retirement system, except all such benefits as are expressly provided by law.

3. Any employee who becomes eligible may elect an optional retirement program. The election shall be made in writing and filed with the Arizona state retirement system and the disbursing officer of the employing institution within thirty days after notice in writing to the employee of the employee's eligibility, and shall become effective on the first day of the pay period following such election, and shall constitute a waiver of all benefits provided by the Arizona state retirement system, except all such benefits as are expressly provided by law.

4. Any eligible employee who is a member of the Arizona state retirement system at the time the employee elects to participate in the optional retirement program shall leave the funds in the employee's retirement account on deposit with the Arizona state retirement system during the continuance of employment. Additional contributions to the employee's retirement account shall not be required and continued service with the Arizona board of regents or an institution under the jurisdiction of the Arizona board of regents while under an optional retirement program shall be deemed to be member service in the Arizona state retirement system for the purpose of determining eligibility for any benefits under such system. The amount of any such benefits under such system shall be computed only on the basis of service otherwise creditable to a member of the system and the employee's compensation during such service. For purposes of subsection D of this section, years of member service in the Arizona state retirement system shall count as years of service under the optional retirement programs.

C. The Arizona board of regents shall contribute public funds appropriated or any other funds available for such purpose on behalf of each participant in the optional retirement programs in an amount equal to seven per cent of the participant's compensation. Each participant shall also contribute an amount equal to seven per cent of the participant's compensation. The appropriation to each university for purposes of enabling the Arizona board of regents to make the contribution provided in this subsection shall not exceed the employer contribution required under the Arizona state retirement system as prescribed by title 38, chapter 5, article 2. Funds utilized by the board of regents or by a university to pay that portion of the contribution that represents the difference between the employer contribution as prescribed by title 38, chapter 5, article 2 and the contribution rate provided in this subsection for an optional retirement program do not constitute a use of appropriated monies for supplemental retirement.

D. In the case of an electing employee initially appointed on or after August 9, 1974, contributions pursuant to subsection C of this section shall not be made by the Arizona board of regents until the employee's completion of five years of service. Employee contributions required



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during this initial five-year period and during continued service with an institution under the jurisdiction of the Arizona board of regents shall be promptly remitted to the optional retirement programs approved by the Arizona board of regents. At the end of an electing employee's completion of five years of service, a single contribution in an amount determined pursuant to subsection C of this section, with interest, shall be made by the chief financial officer of the employing institution to the approved company or companies on behalf of such employee. In the case of an electing employee who does not continue in service with an institution under the jurisdiction of the Arizona board of regents for at least five years, the amount of employer contributions, with interest, shall be refunded to this state.

E. If an employee's service is terminated by death prior to the completion of five years of service, a death benefit equal to the sums appropriated for such employee, plus interest, shall be paid to the beneficiary designated by the participant under the participant's optional retirement program.

F. The provisions of subsection D of this section shall not apply to any electing employee who, at the time of initial appointment, owns a contract determined by the Arizona board of regents to be acceptable for use in the optional retirement program.

G. The Arizona board of regents may provide for the administration of such optional retirement programs and perform or authorize the performance of such functions as may be necessary for such purposes. The Arizona board of regents shall approve the company or companies from which benefits may be purchased under the optional retirement programs. Such optional retirement programs shall not permit loans. In giving its approval, the board shall consider:

1. The nature and extent of the rights and benefits to be provided for participants and their beneficiaries.

2. The relation of such rights and benefits to the amount of contributions to be made.

3. The suitability of such rights and benefits to the needs of the participants and the interests of the institutions under its jurisdiction in the recruitment and retention of faculty and administrative officers.

4. The ability of the approved company or companies to provide such suitable rights and benefits.

H. Any eligible employee initially appointed after August 9, 1974, electing to participate in the optional retirement programs, shall be ineligible for membership in the Arizona state



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retirement system as long as the employee remains continuously employed in any position by the Arizona board of regents or by an institution under its jurisdiction, except as expressly provided by law.

I. The benefits, annuities and employee and employer contributions provided for in this section, and all interest, earnings and other credits pertaining to such benefits, annuities and contributions, shall not be subject to execution or attachment and shall be nonassignable. The employee and employer contributions provided for in this section and all interest, earnings and other credits pertaining to such contributions are exempt from state, county and municipal taxes. The benefits and annuities received by an employee under this section after December 31, 1988 are subject to tax pursuant to title 43.

J. Subject to amendment of the federal-state agreement provided for in section 38-702, every eligible employee electing to participate in the optional retirement programs shall have old age, survivors and disability insurance coverage provided by the federal social security act in accordance with the provisions of title 38, chapter 5, article 1.

*Added Laws 1981, Ch. 1, §2, eff. Jan. 23, 1981. As amended by Laws 1984, Ch. 398, §1, eff. May 16, 1984; Laws 1989, Ch. 312, §4; Laws 2001, Ch. 380, §2 (SB 1295).*

**38-615. Payment for accumulated sick leave; limit; definition**

A. An officer or employee of the state, subject to legislative appropriation, or an officer or employee of a county, subject to authorization by the board of supervisors, is eligible, on retirement, to receive benefits as follows:

1. An officer or employee who has at least five hundred but less than seven hundred fifty hours of sick leave shall receive payments equal to twenty-five per cent of the officer's or employee's salary at the officer's or employee's current hourly rate for each hour of accumulated sick leave.

2. An officer or employee who has at least seven hundred fifty but less than one thousand hours of sick leave shall receive payments equal to thirty-three per cent of the officer's or employee's salary at the officer's or employee's current hourly rate for each hour of accumulated sick leave.

3. An officer or employee who has at least one thousand hours of sick leave shall receive payments equal to fifty per cent of the officer's or employee's salary at the officer's or employee's current hourly rate for each hour of accumulated sick leave not to exceed one thousand five hundred hours of accumulated sick leave.



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B. An officer or employee who receives payments as provided in subsection A of this section shall not receive more than thirty thousand dollars. If an officer or employee receives payments pursuant to subsection A of this section, the officer or employee shall be paid the amount due the officer or employee in installments over a three year period.

C. If an officer or employee dies before the officer or employee receives the total payment due to the officer or employee or if an officer or employee is eligible for normal retirement but has not retired at the time of the officer's or employee's death, the officer's or employee's beneficiary shall receive the balance due to the officer or employee in a lump sum.

D. Notwithstanding any other law:

1. The cash value of the sick leave credit pursuant to subsection A of this section shall not be used to compute the average salary.

2. The payment authorized by this section for accumulated sick leave is not salary or compensation for the purposes of making retirement contributions or computing any pension benefit.

E. The provisions of this section apply to an officer or employee of the state or a county who is eligible to participate in the Arizona state retirement system as provided in chapter 5, article 2 of this title, in the public safety personnel retirement system as provided in chapter 5, article 4 of this title, in the corrections officer retirement plan as provided in chapter 5, article 6 of this title or in an optional retirement program established by the Arizona board of regents pursuant to section 15-1628.

F. This section applies retroactively to July 1, 1998 to an officer or employee of a university under the jurisdiction of the Arizona board of regents who participates in a federal retirement system, except that this section does not apply to a participant in a federal retirement system if the participant receives any sick leave payment from the federal government.

G. The provisions of this section shall apply only to officers or employees of the state or a county whose compensation regulations provide for a forfeiture of sick leave on retirement.

H. For the purposes of this section, "hourly rate" means an officer's or employee's hourly salary on retirement, excluding overtime pay and pay for unused annual leave.

*Added by Laws 1985, Ch. 234, §1. As amended by Laws 1987, Ch. 252, §1; Laws 1988, Ch. 309, §1; Laws 1995, Ch. 32, §11; Laws 1997, Ch. 291, §1, eff. from and after June 30, 1998; Laws*





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*1998, Ch. 264, §3, eff. from and after June 30, 1998; Laws 2000, Ch. 280, §7, retroactively eff. to July 1, 1998.*

**38-616. Retiree accumulated sick leave fund; administration; contribution**

A. A retiree accumulated sick leave fund is established consisting of deposits made pursuant to subsection C of this section. The department of administration shall administer the fund and shall maintain individual accounts for each state officer or employee receiving a benefit on retirement pursuant to section 38-615. Monies in the fund may be used for payment for accumulated sick leave made pursuant to section 38-615 and for any associated employee related expenditures. The department of administration may use up to two per cent of the total amount deposited in the fund in fiscal year 1999-2000 and up to one and one-half per cent of the total amount deposited in the fund in fiscal year 2000-2001 and each fiscal year thereafter to administer section 38-615.

B. The department of administration shall pay the accumulated sick leave payment for each eligible state officer or employee pursuant to section 38-615.

C. All state budget units and legislative and judicial branches of state government that employ officers or employees who may be eligible on retirement to receive payment for accumulated sick leave pursuant to section 38-615 shall contribute a pro rata share of the overall cost of the accumulated sick leave payments. The pro rata share shall be payable by payroll fund source, and the resultant amount shall be deposited in the retiree accumulated sick leave fund. The pro rata share shall be established by the director, is subject to review by the joint legislative budget committee and shall not exceed .40 per cent of the total benefit eligible payroll as prescribed in section 38-651 in fiscal year 1999-2000 and .55 per cent of the total benefit eligible payroll as prescribed in section 38-651 in fiscal year 2000-2001 and each fiscal year thereafter. Total payroll includes all fund sources including the state general fund, federal monies, special revenue funds, intergovernmental revenue monies, trust funds and other payroll sources. A claim for the pro rata share percentage payment shall be submitted according to the fund source, with the accompanying payroll, to the department of administration for deposit in the retiree accumulated sick leave fund.

D. Notwithstanding section 35-190, monies in the retiree accumulated sick leave fund do not revert to the state general fund at the end of each fiscal year.

*As added by Laws 1997, Ch. 291, §2, eff. from and after June 30, 1998; Laws 1998, Ch. 264, §4, eff. from and after June 30, 1998.*





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**38-651.01. Group health and accident coverage for retired public employees and elected officials and their dependents**

A. The department of administration shall, by rule, adopt standards to establish group health and accident coverage for former employees who worked for the state of Arizona and who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona, or disabled, and receiving either income from a retirement program of this state or long-term disability income benefits pursuant to section 38-651.03 or chapter 5, article 2.1 of this title and their dependents and to establish eligibility for retired or disabled state employees to participate in the coverage. The department of administration may adopt rules which provide that if a retired or disabled insured dies before an insured surviving dependent, the insured surviving dependent is entitled to extended coverage at group rates if the insured surviving dependent elects to continue in the coverage within six months of the retired or disabled insured's death and the insured surviving dependent agrees to pay the cost of the premium for group health and accident insurance. Upon notification of the retired or disabled insured's death, the department of administration shall immediately notify an insured surviving dependent of the provisions of this section. The department of administration may enter into agreements with disabled former state employees and their dependents who elect to obtain the coverage provided by this section. The agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage. The department of administration may adopt rules which provide that upon the death of a state employee who at the time of death was eligible for normal retirement pursuant to section 38-757 under the Arizona state retirement system, the insured surviving spouse and eligible dependent children are entitled to continue coverage under group rates provided that the deceased insured state employee, spouse and dependent children were insured at the time of the employee's death. The insured surviving spouse shall be charged an amount sufficient to pay the full premium for the coverage.

B. The department of administration may, by rule, adopt standards to establish group health and accident coverage for former elected officials of this state or its political subdivisions and their dependents and to establish eligibility for former elected officials to participate in the coverage. Qualifications for eligibility shall include that the former elected official has at least five years of credited service in the elected officials' retirement plan pursuant to chapter 5 of this title, had been covered under a group health or group health and accident plan while serving as an elected official and had been serving as an elected official on or after January 1, 1983. The department of administration may adopt rules which provide that upon the death of an elected official or insured former elected official, the insured surviving spouse is entitled to coverage at group rates provided that the deceased insured former elected official met or would have met the qualifications for eligibility pursuant to this subsection or that the deceased elected official would have met the qualifications for eligibility had the deceased not been in office at the time of



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death. Except as provided in subsection J of this section, the insured former elected official or the insured surviving spouse shall be charged amounts which are sufficient to pay for the premium and state administrative expense of providing coverage. Notwithstanding subsection J of this section, the standards shall provide that all or any portion of the former state employees or former elected officials or their dependents shall be grouped with officers and employees of the state and its departments and agencies or their dependents as necessary to obtain health and accident coverage at favorable rates.

C. The state retirement system board may enter into agreements with retired and disabled state employee members of the system and plan who elect to obtain the coverage provided pursuant to subsection A of this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing coverage.

D. Retired state employee or disabled state employee members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15-1628 who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona and their dependents and who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15-1628 may participate in group health and accident coverage provided pursuant to this section. The department of administration shall adopt rules which are necessary for the implementation of this subsection.

E. The fund manager of the public safety personnel retirement system may enter into agreements with retired state employee members and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing coverage.

F. The fund manager of the public safety personnel retirement system may enter into agreements with retired judges and retired elected officials and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing coverage.



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G. The fund manager of the public safety personnel retirement system may contract with an insurance carrier and adopt standards to establish a group health and accident insurance coverage program for retired members of the public safety personnel retirement system, their dependents and their spouses. Any members or spouses who elect to obtain the group health and accident coverage provided under this subsection shall agree to a deduction from their monthly retirement benefits of an amount sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing coverage.

H. A county board of supervisors may enter into agreements to establish group health and accident coverage for retired or disabled county employees and their dependents who elect to obtain the coverage provided pursuant to section 11-263, subsection B. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing for the coverage.

I. Nonmedicare eligible retirees who live in this state, who enroll in a qualifying plan under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the retiree.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the retiree living outside the area of the qualifying health maintenance organization.

J. Public funds shall not be expended to pay all or any part of the premium of insurance pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.



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*Added by Laws 1976, Ch. 117, § 1. Amended by Laws 1977, Ch. 163, § 2, eff. June 6 1977; Laws 1979, Ch. 96, § 1; Laws 1980, Ch. 153, § 2; Laws 1981, Ch. 271, § 2, eff. April 27, 1981; Laws 1983, Ch. 98, § 106, Laws 1983, Ch. 300, § 1; Laws 1984, Ch. 246, § 2; Laws 1985, Ch. 60, § 1; Laws 1986, Ch. 234, § 1, eff. April 29, 1986; Laws 1987, Ch. 282, § 1; Laws 1988, Ch. 277, § 1, eff. Jan. 1, 1989; Laws 1988, Ch. 331, § 1; Laws 1989, Ch. 310, § 1; Laws 1990, Ch. 235, § 1; Laws 1994, Ch. 25, § 1; Laws 1994, Ch. 356, § 3; Laws 1995, Ch. 32, § 12, eff. March 30, 1995; Laws 1995, Ch. 134, § 1, eff. April 17, 1995; Laws 1997 Chapter 291, §3, eff. on and after June 30, 1998.*

**38-651.03. Expenditure of funds for disability income insurance**

The department of administration may expend public funds appropriated for such purpose to procure disability income coverage for full-time officers and employees of the state, its departments and agencies. The department of administration by rule shall adopt standards for integrating such coverage with other forms of income protection and for eligibility of officers and employees. Such coverage shall provide two-thirds of the gross monthly salary of such officer or employee after a waiting period prescribed by the department of administration.

*Added by Laws 1977, Ch. 163, §3, eff. June 6, 1977. Amended by Laws 1983, Ch. 98, §108. Cross-reference: See Title 38, Chapter 5, Article 2.1.*

Double enactment: There was a double enactment of § 38-817. ASRS did not try to meld the enactment of § 38-817, as amended by Chapter 376. It is repealed from and after June 30, 2003.

(Elected Official Retirement Plan)

**38-817. Group health and accident coverage for retired members; payment**

A. The fund manager shall pay from the assets of the fund part of the single coverage premium of any group health and accident insurance for each retired member or survivor of the elected officials' retirement plan who receives a pension if the retired member had eight or more years of credited service under the plan. In order to qualify for payment pursuant to this subsection, the retired member or survivor shall elect single coverage and shall elect to participate in the coverage provided in section 38-651.01 or 38-782 or elect to participate in any other health and accident insurance provided or administered by a participating employer of the elected officials' retirement plan. The fund manager shall pay up to:

1. One hundred fifty dollars per month for each retired member or survivor of the plan who is not eligible for medicare.



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2. One hundred dollars per month for each retired member or survivor of the plan who is eligible for medicare.

B. The fund manager shall pay from the assets of the fund part of the family coverage premium of any group health and accident insurance for benefit recipient who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. The fund manager shall pay up to:

1. Two hundred sixty dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.

2. One hundred seventy dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare.

3. Two hundred fifteen dollars per month if either:

(a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare.

C. Each retired member or survivor of the plan with less than eight years of credited service and a dependent of such a retired member or survivor who participates in the coverage provided by section 38-651.01 or 38-782 or who participates in any other health and accident insurance coverage provided or administered by a participating employer of the plan is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 7.0 to 7.9 years of credited service, ninety per cent.

2. 6.0 to 6.9 years of credited service, seventy-five per cent.

3. 5.0 to 5.9 years of credited service, sixty per cent.

4. Those with less than five years of credited service do not qualify for the benefit.

D. The fund manager shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.



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*As added by Laws 1990, Ch. 236, §4, eff. May 16, 1990. As amended by Laws 1997, Ch. 127, §3, and Ch. 239, §6; Laws 2001, Ch. 383, §2 (HB 2164).*

**38-817.01 Group health and accident coverage for retired members; payment; definition**

A. The fund manager shall pay from the assets of the fund part of the single coverage premium of any group health and accident insurance in the amount of up to sixty dollars per month for each retired member or survivor of the elected officials' retirement plan who receives a pension if the retired member had eight or more years of credited service under the plan. In order to qualify for payment pursuant to this subsection, the retired member or survivor shall elect single coverage and must have elected to participate in the coverage provided in section 38-651.01 or 38-782 or elect to participate in any other health and accident insurance coverage provided or administered by a participating employer of the elected officials' retirement plan.

B. The fund manager shall pay from the assets of the fund part of the family coverage premium of any group health and accident insurance in the amount of up to eighty-five dollars each month for a benefit recipient who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section.

C. Each retired member or survivor of the plan with less than eight years of credited service and a dependent of such a retired member or survivor who participates in the coverage provided by section 38-651.01 or 38-782 or who participates in any other health and accident insurance coverage provided or administered by a participating employer of the plan is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 7.0 to 7.9 years of credited service, ninety per cent.
2. 6.0 to 6.9 years of credited service, seventy-five per cent.
3. 5.0 to 5.9 years of credited service, sixty per cent.
4. Those with less than five years of credited service do not qualify for the benefit.

D. The fund manager shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.

E. Through June 30, 2003, the fund manager shall pay an insurance premium benefit for each retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection a of this section and who lives in a nonservice area as follows:



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1. Up to three hundred dollars per month for a retired member or survivor of the plan who is not eligible for medicare and who has eight or more years of credited service.

2. Up to one hundred seventy dollars per month for a retired member or survivor of the plan who is eligible for medicare and who has eight or more years of credited service.

F. Through June 30, 2003, the fund manager shall pay an insurance premium benefit for a retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection B of this section and who lives in a nonservice area as follows:

1. Up to six hundred dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.

2. Up to three hundred fifty dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare.

3. Up to four hundred seventy dollars per month if either:

(a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare.

G. A retired member or survivor of the plan who is enrolled in a managed care program in a nonservice area is not eligible for the payment prescribed in subsection E or F of this section if the member terminates coverage under the managed care program.

H. Through June 30, 2003, a retired member or survivor of the plan may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's employer if that employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the plan.

I. For the purposes of this section, "nonservice area" means an area in this state in which the Arizona state retirement system pursuant to section 38-782, the department of administration pursuant to section 38-651.01 or the member's or survivor's participating employer does not provide or administer a health care services organization program, excluding any preferred provider organization program or individual health indemnity policy, for which the retired member or survivor of the plan is eligible.





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This section is effective retroactively from and after June 30, 2001.

*As amended by Laws 2001, Ch. 376, §2 (SB 1107).*

**38-855. Transfer outside the public safety personnel retirement system**

A member who changes employment or transfers or is assigned to a position in which such member is no longer eligible to be a member of this system, because of a change in duties or otherwise, with the same or another public employer of this state maintaining a retirement program for public officers or employees authorized by law may have all credited service transferred to the retirement system or program applicable to the new position. If the member does not transfer credited service as provided in this section within two years after the change in employment or transfer, the member shall request a refund of member contributions or shall have the credited service transferred pursuant to this section. Any transfer of credited service pursuant to this section to a state retirement system or plan shall be made pursuant to article 7 of this chapter and must be approved by the fund manager.

*Originally A.R.S. §38-857 as added by Laws 1977, Ch. 60, §2. As amended by Laws 1981, Ch. 1, §19, eff. January 23, 1981. Renumbered as §38-855 and amended by Laws 1983, Ch. 300, §20. As amended by Laws 1988, Ch. 250, §2; Laws 1989, Ch. 310, §9; Laws 1997, Ch. 239, §19.*

Double enactment: There was a double enactment of § 38-857. ASRS did not try to meld the enactment of § 38-857, as amended by Chapter 376 is repealed from and after June 30, 2003.

(Public Safety Personnel Retirement System)

**38-857. Group health and accident coverage for retired members; payment**

A. The fund manager of the public safety personnel retirement system shall pay part of the single coverage premium of any group health and accident insurance for each etired member or survivor of the system who receives a pension and who has elected to participate in the coverage provided by section 38-651.01 or 38-782 or any other health and accident insurance coverage provided or administered by a participating employer of the system. The fund manager shall pay up to:

1. One hundred fifty dollars per month for each retired member or survivor of the system who is not eligible for medicare.





2. One hundred dollars per month for each retired member or survivor of the system who is eligible for medicare.

B. The fund manager of the system shall pay from assets of the fund part of the family coverage premium of any group health and accident insurance each month for a benefit recipient who elects family coverage and otherwise qualifies for payment pursuant to subsection A of this section. The fund manager shall pay up to:

1. Two hundred sixty dollars per month if the retired member or survivor of the system and one or more dependents are not eligible for medicare.

2. One hundred seventy dollars per month if the retired member or survivor of the system and one or more dependents are eligible for medicare.

3. Two hundred fifteen dollars per month if either:

(a) The retired member or survivor of the system is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the system is eligible for medicare and one or more dependents are not eligible for medicare.

C. The fund manager shall not pay from assets of the fund more than the amount prescribed in this section for a benefit recipient as a member or survivor of the system.

D. This section does not apply to a retired member or survivor of the system who is reemployed by this state or a political subdivision of this state and who participates in coverage provided by this state or a political subdivision of this state as an active employee.

*Added by Laws 1988, Ch. 331, §3. Amended by Laws 1989, Ch. 310, §11; Laws 1990, Chapter 235, §5; Laws 1992, Ch. 228, §3; Laws 1994, Ch. 207, §5; Laws 1995, Chapter 32, §17; Laws 1997, Chapter 239, §20; Laws 2001, Chapter 383, §3 (HB 2164).*

### **38-857.01. Group health and accident coverage for retired members; payment; definition**

A. The fund manager of the public safety personnel retirement system shall pay part of the single coverage premium of any group health and accident insurance in the amount of up to eighty-two dollars fifty cents per month for each retired member or survivor of the system who receives a pension and who has elected to participate in the coverage provided by section 38-



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651.01 or 38-782 or any other health and accident insurance coverage provided or administered by a participating employer of the system.

B. The fund manager of the system shall pay from assets of the fund part of the family coverage premium of any group health and accident insurance in an amount of up to one hundred thirty dollars each month for a benefit recipient who elects family coverage and otherwise qualifies for payment pursuant to subsection A of this section.

C. The fund manager shall not pay from assets of the fund more than the amount prescribed in this section for a benefit recipient as a member or survivor of the system.

D. This section does not apply to a retired member or survivor of the system who is reemployed by this state or a political subdivision of this state and who participates in coverage provided by this state or a political subdivision of this state as an active employee.

E. Through June 30, 2003, the fund manager shall pay an insurance premium benefit for each retired member or survivor of the system who is entitled to a premium benefit payment pursuant to subsection a of this section and who lives in a nonservice area as follows:

1. Up to three hundred dollars per month for a retired member or survivor of the system who is not eligible for medicare.

2. Up to one hundred seventy dollars per month for a retired member or survivor of the system who is eligible for medicare.

F. Through June 30, 2003, the fund manager shall pay an insurance premium benefit for a retired member or survivor of the system who is entitled to a premium benefit payment pursuant to subsection b of this section and who lives in a nonservice area as follows:

1. Up to six hundred dollars per month if the retired member or survivor of the system and one or more dependents are not eligible for medicare.

2. Up to three hundred fifty dollars per month if the retired member or survivor of the system and one or more dependents are eligible for medicare.

3. Up to four hundred seventy dollars per month if either:

- (a) The retired member or survivor of the system is not eligible for medicare and one or more dependents are eligible for medicare.



(b) The retired member or survivor of the system is eligible for medicare and one or more dependents are not eligible for medicare.

G. A retired member or survivor of the system who is enrolled in a managed care program in a nonservice area is not eligible for the payment prescribed in subsection e or f of this section if the member terminates coverage under the managed care program.

H. Through June 30, 2003, a retired member or survivor of the system may elect to purchase individual health section through the retired member's employer if that employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the system.

I. For the purposes of this section, "nonservice area" means an area in this state in which the Arizona state retirement system pursuant to section 38-782, the department of administration pursuant to section 38-651.01 or the member's or survivor's participating employer does not provide or administer a health care services organization program, excluding any preferred provider organization program or individual health indemnity policy, for which the retired member or survivor of the system is eligible.

*This section is effective retroactively from and after June 30, 2001.  
As amended by Laws 2001, Chapter 376, §3 (SB 1107).*

Double enactment: There was a double enactment of § 38-906. ASRS did not try to meld the enactment of § 38-906, as amended by Chapter 376 is repealed from and after June 30, 2003.

(Correction Officers Retirement Plan)

### **38-906. Group health and accident coverage for retired members; payment**

A. The fund manager shall pay from the assets of the fund part of the single coverage premium of any group health and accident insurance for each retired member or survivor of the plan who receives a pension and who has elected to participate in coverage provided by section 38-651.01 or 38-782 or any other health and accident insurance coverage provided or administered by a participating employer in the plan. The fund manager shall pay up to:

1. One hundred fifty dollars per month for each retired member or survivor of the plan who is not eligible for medicare.



2. One hundred dollars per month for each retired member or survivor of the plan who is eligible for medicare.

B. The fund manager shall pay from the assets of the fund part of the family coverage premium of any group health and accident insurance for each retired member or survivor of the plan who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. Payment under this subsection is in the following amounts:

1. Up to two hundred sixty dollars each per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.

2. Up to one hundred seventy dollars each per month if the retired member or survivor of the plan and one or more dependents are both eligible for medicare.

3. Up to two hundred fifteen dollars if either:

(a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare.

C. The fund manager shall not pay more than the amount prescribed in subsection A or B of this section for a benefit recipient as a member or survivor of the plan.

*As added by Laws 1990, Ch. 272, §9. As amended by Laws 1994, Ch. 356, §32; Laws 1997, Ch. 239, §27; Laws 2001, Chapter 383, §4 (HB 2164).*

**38-906.01. Group health and accident coverage for retired members; payment; definition**

A. The fund manager shall pay from the assets of the fund part of the single coverage premium of any group health and accident insurance in the amount of up to ninety-five dollars per month for each retired member or survivor of the plan who is receiving benefits, who is not eligible for medicare and who elects single coverage and up to sixty-five dollars per month for each retired member or survivor of the plan who is receiving benefits, who is eligible for medicare and who elects single coverage. In order to qualify for the benefits provided in this section, the retired member or survivor must participate in coverage provided by section 38-651.01 or 38-782 or participate in any other health and accident insurance coverage provided or administered by a participating employer in the plan.



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B. The fund manager shall pay from the assets of the fund part of the family coverage premium of any group health and accident insurance for each retired member or survivor of the plan who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. Payment under this subsection is in the following amounts:

1. Up to one hundred seventy-five dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.

2. Up to one hundred fifteen dollars per month if the retired member or survivor of the plan and one or more dependents are both eligible for medicare.

3. Up to one hundred forty-five dollars if either:

(a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible

C. The fund manager shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.

D. Through June 30, 2003, the fund manager shall pay an insurance premium benefit for each retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection a of this section and who lives in a nonservice area as follows:

1. Up to three hundred dollars per month for a retired member or survivor of the plan who is not eligible for medicare.

2. Up to one hundred seventy dollars per month for a retired member or survivor of the plan who is eligible for medicare.

E. Through June 30, 2003, the fund manager shall pay an insurance premium benefit for a retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection B of this section and who lives in a nonservice area as follows:

1. Up to six hundred dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.



2. Up to three hundred fifty dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare.

3. Up to four hundred seventy dollars per month if either:

(a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare.

F. A retired member or survivor of the plan who is enrolled in a managed care program in a nonservice area is not eligible for the payment prescribed in subsection D or E of this section if the member terminates coverage under the managed care program.

G. Through June 30, 2003, a retired member or survivor of the plan may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's employer if that employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the plan.

H. For the purposes of this section, "nonservice area" means an area in this state in which the Arizona state retirement system pursuant to section 38-782, the department of administration pursuant to section 38-651.01 or the member's or survivor's participating employer does not provide or administer a health care services organization program, excluding any preferred provider organization program or individual health indemnity policy, for which the retired member or survivor of the plan is eligible.

*This section is effective retroactively from and after June 30, 2001.*

*As amended by Laws 2001 Chapter 376, §3 (SB1107).*

**38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state; definitions**

A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter, may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:



1. The board or fund manager governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or fund manager governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.

2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board or fund manager of the retirement system or plan to which the member is contributing.

B. For the purposes of this section:

1. **"Active member"** means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.

2. **"Inactive member"** means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in the state retirement system or plan.

(c) Is not currently making contributions to the state retirement system or plan.

(d) Has not withdrawn contributions from the state retirement system or plan.

*Added as §38-951 by Laws 1989, Ch. 310, §16. Renumbered as §38-921. Amended by Laws 1995, Ch. 32, §19; Laws 2001, Ch. 123, §1, (HB 2111).*

### **38-922. Transfer or redemption of service credits**

A. Service credits qualified in accordance with section 38-921 may be transferred or redeemed in accordance with this section.

B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:



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1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.

2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based upon the transferring member's service credits at the time of transfer.

C. In the event a member decides to transfer:

1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:

(a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.

(b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.

D. In the case of an applicant who has withdrawn his member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which he is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed





by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.

E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

*Added as §38-952 by Laws 1989, Ch. 310, §16. Renumbered as §38- 922. Amended by Laws 1991, Ch. 270, §10.*

**41-3006.08. Arizona state retirement system; termination July 1, 2006**

A. The Arizona state retirement system board and director terminate on July 1, 2006.

B. Title 38, chapter 5, articles 2 and 2.1 are repealed on January 1, 2007.

*Originally added as §41-3006.01 by Laws 1996, Ch. 18, §2, retroactively eff. July 1, 1996. Renumbered as §41-3006.08. As Amended by Laws 1997, Ch. 143, §8, eff. January 1, 1998.*

**42-271. Property subject to tax**

A. All property in this state shall be subject to taxation, except:

1. Federal, state, county and municipal property including property owned by a nonprofit organization but used by the state or a political subdivision during the entire taxable year exclusively for a government activity and including property which is the subject of a lease-purchase agreement authorized by law in which the state or a political subdivision is the lessee-purchaser and the property is used by the state or a political subdivision during the entire taxable year exclusively for government activity.

2. Public debts as evidenced by the bonds of this state, counties, municipalities or other political subdivisions.

3. Public libraries, colleges, schoolhouses and other buildings used for education, with their furniture, libraries and equipment, and the lands appurtenant to and used with such buildings, as long as they are used for the purpose of education and not used or held for profit, but when such property is private property from which a rent or valuable consideration is received for its use it shall be taxed as other property.



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4. Property and buildings pursuant to a lease or lease-purchase agreement leased from a school district as provided in section 15-342, paragraph 9 or 10 or leased from a community college district as provided in section 15-1444.

5. Hospitals and other charitable institutions for relief of the indigent or afflicted and the lands appurtenant to such buildings, with their fixtures and equipment, not used or held for profit.

6. Grounds and buildings belonging to agricultural societies, as long as they are used for those purposes only, and not used or held for profit.

7. Churches and other buildings used for religious worship, with their furniture and equipment, and the land and improvements appurtenant to and used with such buildings, provided rent is not paid for such land or improvements, and as long as the property is not used or held for profit.

8. Cemeteries set apart and used for interring the dead, except such portions thereof as are used or held for profit.

9. The property of widows, widowers, disabled persons, honorable discharged veterans, members of the revenue marine service, the coast guard and military nurses, residents of this state, to the extent allowed by article IX, sections 2, 2.1, 2.2 and 2.3, Constitution of Arizona, and subject to the conditions prescribed by section 42-278.

10. Observatories maintained for astronomical research and education for the public welfare, together with all property used in the work or maintenance of observatories, including property held in trust, as long as the observatories and other property are used for such purposes only and not used or held for profit.

11. Property used for operation of a health care institution which provides medical services, nursing services or health related services to handicapped persons or persons sixty-two years of age or older and which is not used or held for profit.

12. Property used for the operation of a residential apartment housing facility which is not used or held for profit, which is structured for handicapped persons or persons sixty-two years of age or older, which is located adjacent to property exempted from taxation pursuant to paragraph 11 of this subsection and which is owned and operated by the same persons or associations as such other adjacent property.



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13. Property used for the operation of a residential apartment housing facility which is not used or held for profit and is structured for handicapped persons or persons sixty-two years of age or older and for which a subsidy or payment is given by federal, state or local government or by nonprofit organizations in a substantial amount in relation either to the amount given or the total annual operating expenses to pay for principal, interest and operating expenses provided such nonprofit organizations are not created or operated for the primary purpose of providing such subsidy or payment.

14. Property of other charitable institutions for relief of the indigent or afflicted, including the lands appurtenant to such property, with their fixtures and equipment, and other reasonably required property, as long as such institutions and their property are not held or used for profit and any income from such property is used exclusively for the relief of the indigent or afflicted and necessary and reasonable operating expenses.

15. Grounds and buildings belonging to societies for the prevention of cruelty to animals and for sheltering, caring for and controlling animals, as long as the grounds and buildings are used for those purposes only and not used or held for profit.

16. Property held by a charitable organization, recognized under section 501 (c )(3) of the United State Internal Revenue Code and section 43-120\1, for transfer to this state or a political subdivision of this state to be used as parkland if no rent or valuable consideration is received by he charitable organization.

17. Property belonging to a volunteer fire department recognized under section 43-1201 and section 501 of the Internal Revenue Code as defined in section 43-104, provided the property is used exclusively for fire suppression and prevention activities and neither used nor occupied by or for the benefit of any person.

18. Property held by a charitable organization recognized under section 501(C)(3) of the United States Internal Revenue Code and section 43-12011 to preserve and protect scientific, biological, geological, paleontological, natural or archaeological resources.

19. Property that is owned by a volunteer nonprofit organization, used exclusively for the purpose of performing roadway cleanup and beautification on a gratuitous basis, not used or held for profit and not used or occupied by or for the benefit of any person.

20. Property of musical, dramatic and dance groups, botanical gardens, museums and zoos, qualified as nonprofit charitable organizations under section 501(c )(3) of the United States Internal Revenue Code, as defined in section 43-104, as long as the property is used for those purposes and not used or held for profit.



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21. A commodity, as defined by title 7 United States Code section 2, that is consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

22. Animal and poultry feed, including salts, vitamins and other additives, for animal or poultry consumption.

B. The exceptions contained in this section relating to charitable institutions do not apply to property owned by charitable institutions but primarily held or used by others whose use is not excepted from taxation by this section or by the Constitution of Arizona.

C. Notwithstanding subsection A, paragraph 1 of this section relating to state property, property that is owned by the state retirement system, the state retirement plan, the corrections officials' retirement plan, that is not used during the entire taxable year exclusively for a governmental activity and that is acquired either by foreclosure of an authorized investment or for the purposes of producing income for the system or plan shall be subject to either a possessory interest tax or if a possessory interest tax is not paid or is not economically feasible, to voluntary contributions of money to this state, the county, school districts, a community college district and any other special taxing district organized under title 48 in which the property is located in lieu of taxes otherwise levies by those entities. The system or plan may not continue to hold title as authorized investment under title 38 unless a possessory interest tax is paid or the titleholder pays a voluntary contribution. On or before April 1 each year the plan or system shall notify the count assessor of the county in which the property is located if a possessory interest tax will be paid or voluntary contribution will be made under this subsection. If a possessory interest tax is not economically feasible, the county assessor may require the titleholder to pay voluntary contributions. If the system or plan pays a voluntary contribution:

1. The assessor shall determine the full cash value of the property at market value and transmit that determination to the board of supervisors on or before the third Monday in June.

2. On or before the third Monday in August the assessor shall compute the contribution to be made based on the determined valuation using the method of assessment applied in assessing ad valorem taxes of properties of similar character and devoted to the same use in the county for the current taxable year.

3. The assessor shall submit the computation of the contribution to the board of supervisors at the same time as he submits the assessment roll and shall also notify the county school superintendent of the amount of contribution.



4. The retirement system or plan shall pay one-half of the amount determined not later than the first Monday in November and the other one-half not later than the first Monday in May of the next year.

5. The county treasurer shall distribute the monies received to the various taxing jurisdictions in the same manner as property taxes are distributed.

6. Any person, public official or taxing entity that is not satisfied by a determination under this subsection has the same remedies provided by this title or may file a civil action to determine the correct amount due, and in any such action the only issue shall be the correctness of the computation of the amount due.

D. If property is exempt from taxation under subsection A, paragraph 16 of this section, and is transferred to an entity other than this state or a political subdivision of this state or if the property is used or occupied by or for the benefit of any other person, the charitable organization is liable for all taxes, interest and penalties which would be due if the property were not classified as exempt.

*As amended by Laws of 1973, Ch. 172, §105; Laws of 1975, Ch. 25, §1, eff. May 12, 1975; Laws of 1975, Ch. 170, §1; Laws of 1976, Ch. 180, §1; Laws of 1977, Ch. 172, §17, eff. Jan. 1, 1978; Laws of 1980, Ch. 143, §1; Laws of 1980, 2<sup>nd</sup> SS, Ch. 8, §59; Laws of 1981, Ch. 1, §25, eff. Jan. 23, 1981; Laws of 1983, Ch. 9, §9, eff. Feb. 25, 1983; Laws of 1984, Ch. 177, §1; Laws of 1984, Ch. 349, §23; Laws of 1987, Ch. 308, §1, eff. May 16, 1987; Laws of 1987, Ch. 340, 1989, Ch. 202, §1; Laws of 1990, Ch. 103, §1; Laws of 1990, Ch. 348, §25, eff. June 26, 1990; Laws of 1990, Ch. 412, §1; Laws of 1991, Ch. 221, §1.*

**42-11102. Exemption for government property; application of procedural provisions**

A. Federal, state, county and municipal property is exempt from taxation, including:

1. Property that is owned by a nonprofit organization but is used by this state or a political subdivision during the entire tax year exclusively for a governmental activity.

2. Property that is the subject of a lease-purchase agreement that is authorized by law in which this state or a political subdivision is the lessee-purchaser and the property is used by this state or a political subdivision during the entire taxable year exclusively for a governmental activity.

3. Improvements that are placed on public lands held under grazing permits, the title to which passes to the federal government.



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B. Article 4 of this chapter does not apply to the exemption from taxation for federal, state, county and municipal property.

C. Notwithstanding subsection A of this section relating to state property, property that is owned by the Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system or the elected officials' retirement plan, that is not used during the entire taxable year exclusively for a governmental activity and that is acquired either by foreclosure of an authorized investment or for the purposes of producing income for the system or plan is subject to either a government property lease tax under chapter 6, article 5 of this title or, if a government property lease tax is not paid or is not economically feasible, to voluntary contributions of money to the county, municipality, school district, community college district and any other special taxing district in which the property is located in lieu of taxes otherwise levied by those entities. The system or plan may not continue to hold title to the property as an authorized investment under title 38 unless a tax or voluntary contribution is paid pursuant to this subsection. On or before April 1 of each year the plan or system shall notify the county assessor of the county in which the property is located whether a government property lease tax or voluntary contribution will be paid. If a tax is not economically feasible, the county assessor may require the plan or system to pay voluntary contributions. If the system or plan pays a voluntary contribution:

1. The assessor shall determine the full cash value of the property at market value and shall transmit that determination to the board of supervisors on or before the third Monday in June.

2. On or before the third Monday in August the assessor shall compute the contribution to be made based on the determined valuation using the method of assessment applied in assessing ad valorem taxes of properties of similar character and devoted to the same use in the county for the current tax year.

3. The assessor shall:

- (a) Submit the computation of the contribution to the board of supervisors at the same time that the assessor submits the assessment roll.

- (b) Notify the county school superintendent of the amount of the contribution.

4. The plan or system shall pay one-half of the amounts determined not later than the first Monday in November and the other one-half not later than the first Monday in May of the next year.



5. The county treasurer shall distribute the monies received to the various taxing jurisdictions in the same manner as property taxes are distributed.

6. Any person, public official or taxing entity that is not satisfied by a determination under this subsection has the same remedies provided by this title or may file a civil action to determine the correct amount due. In any such action the only issue shall be the correctness of the computation of the amount due.

*Added by Laws 1997, Ch. 150, §172, eff. January 1, 1999. As amended by Laws 1998, Ch. 1, §187, eff. January 1, 1999.*

#### **43-1022. Subtractions from Arizona gross income**

In computing Arizona adjusted gross income, the following amounts shall be subtracted from Arizona gross income:

1. The amount of exemptions allowed by section 43-1023.
2. Benefits, annuities and pensions in an amount totaling not more than two thousand five hundred dollars received from one or more of the following:
  - (a) The United States government service retirement and disability fund, retired or retainer pay of the uniformed services of the United States, the United States foreign service retirement and disability system and any other retirement system or plan established by federal law.
  - (b) The state retirement system, the state retirement plan, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan, an optional retirement program established by the Arizona board of regents under section 15-1628, an optional retirement program established by a community college district board under section 15-1451, or a retirement plan established for employees of a county, city or town in this state.
3. A beneficiary's share of trust or estate income recognized pursuant to the internal revenue code.
4. The amount of any distributions from an individual retirement account as provided for in section 408 of the internal revenue code or from a qualified retirement plan of a self-employed individual as provided for in section 401 of the internal revenue code to the extent that total adjustments made pursuant to this paragraph in all tax years do not exceed the total of all





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contributions made by the taxpayer to such plans prior to December 31, 1975, which were included in computing Arizona taxable income.

5. The amount of income on an installment receivable which is recognized pursuant to the internal revenue code and which has already been recognized on the death of the taxpayer for purposes of this title for tax years ending before January 1, 1990.

6. Interest income received on obligations of the United States, less any interest on indebtedness, or other related expenses, and deducted in arriving at Arizona gross income, which were incurred or continued to purchase or carry such obligations.

7. The amount of any income tax refunds which were received from states other than Arizona and which were included as income in computing federal adjusted gross income.

8. Annuity income included in federal adjusted gross income pursuant to section 72 of the internal revenue code if the first payment with respect to such annuity was received prior to December 31, 1978.

9. The excess of a partner's share of income required to be included under section 702(a)(8) of the internal revenue code over the income required to be included under chapter 14, article 2 of this title.

10. The excess of a partner's share of partnership losses determined pursuant to chapter 14, article 2 of this title over the losses allowable under section 702(a)(8) of the internal revenue code.

11. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to this title and the income tax act of 1954, as amended, exceeds the adjusted basis of such property computed pursuant to the internal revenue code. This paragraph shall apply to all property which is held for the production of income and which is sold or otherwise disposed of during the taxable year other than depreciable property used in a trade or business.

12. The amount allowed by section 43-1024 for amortization, by a qualified defense contractor certified by the department of commerce under section 41-1508, of a capital investment for private commercial activities.

13. The amount of gain included in federal adjusted gross income on the sale or other disposition of a capital investment that a qualified defense contractor has elected to amortize pursuant to section 43-1024.





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14. The amount allowed by section 43-1025 for contributions during the taxable year of agricultural crops to charitable organizations.

15. The portion of any wages or salaries paid or incurred by the taxpayer for the taxable year that is equal to the amount of the federal work opportunity credit, the empowerment zone employment credit, the credit for employer paid social security taxes on employee cash tips and the Indian employment credit that the taxpayer received under sections 45A, 45B, 51(a) and 1396 of the internal revenue code.

16. The amount of prizes or winnings less than five thousand dollars in a single taxable year from any of the state lotteries established and operated pursuant to title 5, chapter 5, article 1, except that all such winnings before March 22, 1983, including periodic distributions from such winnings made after March 22, 1983, may be subtracted.

17. The amount of exploration expenses that is determined pursuant to section 617 of the internal revenue code, that has been deferred in a taxable year ending before January 1, 1990 and for which a subtraction has not previously been made. The subtraction shall be made on a ratable basis as the units of produced ores or minerals discovered or explored as a result of this exploration are sold.

18. The amount included in federal adjusted gross income pursuant to section 86 of the internal revenue code, relating to taxation of social security and railroad retirement benefits.

19. To the extent not already excluded from Arizona gross income under section 112 of the internal revenue code, compensation received for active service as a member of the armed forces of the United States for any month during any part of which the member served in a combat zone as determined under section 112 of the internal revenue code or in an area given the same treatment as a combat zone for purposes of section 112 of the internal revenue code.

20. The amount of unreimbursed medical and hospital costs, adoption counseling, legal and agency fees and other nonrecurring costs of adoption not to exceed three thousand dollars. In the case of a husband and wife who file separate returns, the subtraction may be taken by either taxpayer or may be divided between them, but the total subtractions allowed both husband and wife shall not exceed three thousand dollars. The subtraction under this paragraph may be taken for the costs that are described in this paragraph and that are incurred in prior years, but the subtraction may be taken only in the year during which the final adoption order is granted.

21. The amount authorized by section 43-1027 for the taxable year relating to qualified wood stoves, wood fireplaces or gas fired fireplaces.



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22. With respect to a medical savings account established pursuant to section 43-1028:

(a) An eligible individual may subtract:

(i) The amount of contributions made by the individual's employer during the taxable year to the individual's medical savings account pursuant to section 43-1028 to the extent that the employer contributions are included in the individual's federal adjusted gross income.

(ii) The amount deposited by the individual in the account during the taxable year to the extent that the individual's contributions are included in the individual's federal adjusted gross income.

(b) The individual's employer may subtract the amount of contributions made by the employer to a medical savings account established on the individual's behalf to the extent that the contributions are not deductible under the internal revenue code.

23. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code.

24. Any amount of qualified educational expenses that is distributed from a qualified state tuition program determined pursuant to section 529 of the internal revenue code and that is included in income in computing federal adjusted gross income.

25. Any item of income resulting from an installment sale that has been properly subjected to income tax in another state in a previous taxable year and that is included in Arizona gross income in the current taxable year.

26. Any item of income resulting from an installment sale that has been properly subjected to income tax in another state in a previous year and that is included in Arizona gross income in the current taxable year.

27. The amount authorized by section 43-1030 relating to holocaust survivors.

28. The amount authorized by section 43-1031 for constructing an energy efficient residence.

*As amended by Laws 1998, Ch. 236, §4, eff. August 1, 1998; Laws 2000, Ch. 63, §9, eff. July 18, 2000; Laws 2001, Ch. 115, §17.*



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## **SESSION LAWS**

### **Laws of 1976, Chapter 99**

#### **Section 1. Five per cent increase**

Effective July 1, 1976 the following persons shall receive a permanent increase of five per cent of the present base benefit received by such persons:

1. All persons who were receiving retirement benefits on or before June 30, 1974 as members or participants of the retirement plan or the Arizona teachers retirement system, pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, or title 15, chapter 14, article 1, Arizona Revised Statutes.

2. All persons who were receiving retirement benefits on or before May 16, 1975 as members of the state retirement system pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes.

3. All persons who are receiving lieu pensions pursuant to section 38-761, Arizona Revised Statutes.

#### **Sec. 2. Additional increase**

Effective July 1, 1976, the following persons shall receive, in addition to the increase prescribed in section 1, a permanent increase of five per cent of the present base benefit received by such persons:

1. All persons who were receiving retirement benefits on or before June 30, 1974 as members or participants of the retirement plan or the Arizona teachers retirement system, pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, or title 15, chapter 14, article 1, Arizona Revised Statutes, and are receiving less than five hundred dollars per month as such retirement base benefits.

2. All persons who were receiving retirement benefits on or before May 16, 1975 as members of the state retirement system pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes, and are receiving less than five hundred dollars per month as such retirement base benefits.



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3. All persons who are receiving lieu pensions pursuant to section 38-761, Arizona Revised Statutes, and are receiving less than five hundred dollars per month as such retirement base benefits.

**Sec 3. Fund**

Benefit increases provided for all persons listed in paragraphs 1, 2 and 3 of sections 1 and 2 of this act shall be paid from the current assets of the plan of the Arizona state retirement system. The benefit increases provided for in this act shall be added to the unfunded liability of the plan of the Arizona state retirement system.

**Sec. 4. Applicability**

The provisions of this act shall not apply to retirement benefits received by any elected official pursuant to section 38-781.31 or section 38-781.34, Arizona Revised Statutes.

**Sec. 5. Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.



## Laws of 1978, Chapter 53

### Section 1. Permanent increase; exception

A. Effective July 1, 1978 the following persons shall receive a permanent increase pursuant to section 2 in their present base benefit received as a retirement benefit by such persons:

1. All persons who were receiving retirement benefits on or before June 30, 1977 as members or participants of the state retirement system pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes, the retirement plan pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, or the Arizona teachers' retirement system pursuant to title 15, chapter 14, article 1, Arizona Revised Statutes.

2. All persons who are receiving lieu pensions pursuant to § 38- 761, Arizona Revised statutes.

B. The benefit increases provided by this act shall not apply to persons receiving a present base retirement benefit in excess of five hundred dollars per month or to persons receiving retirement benefits under the elected officials retirement program.

### Sec. 2. Cost of living increase

A. Effective July 1, 1978, as an additional supplement to all persons, pursuant to section 1 of this act, whose retirement benefit became effective during the respective dates indicated in this section, a cost of living increase shall be added to present base benefit which is the product of the present retirement benefit multiplied by the percentage increase applicable according to the effective date of the retirement as provided below:

Effective date of retirement      percentage of present retirement benefit increase

<u>Effective date of retirement</u>	<u>Percent of present retirement benefit increase</u>
July 1, 1976 through June 30, 1977	2%
July 1, 1975 through June 30, 1976	4%
July 1, 1974 through June 30, 1975	6%
July 1, 1973 through June 30, 1974	8%
July 1, 1972 through June 30, 1973	10%



<b><u>Effective date of retirement</u></b>	<b><u>Percent of present retirement benefit increase</u></b>
July 1, 1971 through June 30, 1972	12%
July 1, 1970 through June 30, 1971	14%
July 1, 1969 through June 30, 1970	16%
July 1, 1968 through June 30, 1969	18%
July 1, 1967 through June 30, 1968	20%
July 1, 1966 through June 30, 1967	22%
July 1, 1965 through June 30, 1966	24%
July 1, 1964 through June 30, 1965	26%
July 1, 1963 through June 30, 1964	28%
July 1, 1962 through June 30, 1963	30%
July 1, 1961 through June 30, 1962	32%
July 1, 1960 through June 30, 1961	34%
July 1, 1959 through June 30, 1960	36%
July 1, 1958 through June 30, 1959	38%
July 1, 1957 through June 30, 1958	40%
July 1, 1956 through June 30, 1957	42%
July 1, 1955 through June 30, 1956	44%
July 1, 1954 through June 30, 1955	46%
July 1, 1953 through June 30, 1954	48%
Prior to July 1, 1953	50%

B. The cost of living retirement benefit determined pursuant to subsection A of this section shall become a permanent base benefit but such base benefit, including the increase shall not exceed five hundred dollars.

### **Sec. 3. Funding**

Benefit increases provided by section 1 of this act shall be paid from the current assets of the retirement plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

### **Sec. 4. Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.



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## Laws of 1979, Chapter 91

### **Sec. 4. Transfer of assets and liabilities of state employees retirement system; transition**

Effective at the end of the 1978-1979 fiscal year, all then existing assets and liabilities of the prior service credits account of the state employees retirement system under title 38, chapter 5, article 2, Arizona Revised Statutes, shall be transferred to and become a part of the respective assets and liabilities of the retirement plan under title 38, chapter 5, article 2.1, Arizona Revised Statutes, in such amounts as are determined by the actuary and approved by the Arizona state retirement system board, and shall thereafter be administered and accounted for entirely within the structure of the retirement plan. To accomplish the intent of the section:

1. The employer funding receivables in the prior service credits account at the end of the 1978-79 fiscal year, as determined by the actuary, shall be frozen as of such date and shall not thereafter be changed for any reason other than to reflect payments received from any employer in accordance with the employer's payment obligation.

2. Assets of the prior service credits account which are transferred to the retirement plan under title 38, chapter 5, article 2.1, Arizona Revised Statutes, shall be credited to the employer's contribution account of the appropriate reserve of such plan for nonretired participants or to the retired members' reserve account for retired members.

3. Employer funding receivables received on or after July 1, 1979, by the retirement plan under title 38, chapter 5, article 2.1, Arizona Revised Statutes, shall be credited to the employer's contribution account of the appropriate reserve of such plan, with a corresponding debit to the employer receivables account of such plan.

4. Nothing in this section may be construed to deprive any member entitled to prior service credits or benefits of any previously existing prior service credits or benefits.

### **Sec. 5. Transfer of assets and liabilities of teachers' retirement system; transition**

Effective at the end of the 1978-1979 fiscal year, all then existing assets and liabilities of the teachers' retirement system under title 15, chapter 14, Arizona Revised Statutes, shall be transferred to and become a part of the respective assets and liabilities of the retirement plan under title 38, chapter 5, article 2.1, Arizona Revised Statutes, and shall thereafter be administered and accounted for entirely within the structure of the retirement plan. In order to accomplish the intent of the section:



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1. In lieu of the annual amounts of contributions payable as accrued liability contributions determined in accordance with section 15-1421, subsection A, Arizona Revised Statutes, the budget of the superintendent of public instruction shall include for the fiscal year 1979-80, and for each of the next nine subsequent fiscal years, for payment to the retirement plan on January 1 of each such fiscal year, the level annual amount sufficient to amortize in full the accrued liability of the teachers' retirement system as determined by the actuary at the end of the 1978-79 fiscal year.

2. The initial annuity amounts payable at retirement on or after July 1, 1979 from the annuity savings fund to the remaining members on leave of absence shall be based on interest and mortality assumptions recommended by the actuary and approved by the Arizona state retirement system board. All other benefits for such members shall be determined on the basis of the law which was applicable to such members prior to the effective date of this act.

3. Nothing in this section may be construed to deprive any member entitled to credits or benefits under the former teachers' retirement system of any previously existing credits or benefits.





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## **Laws of 1980, Chapter 180**

### **Section 1. Permanent retirement benefit increase**

Effective July 1, 1980 the following persons shall receive a permanent increase of five percent of their present base benefit received as a retirement benefit to be added to the present base benefit:

1. All persons who were receiving retirement benefits on or before June 30, 1979 as members or participants of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, the retirement plan established under title 38, chapter S, article 2.1, Arizona Revised Statutes, or the Arizona teachers' retirement system established under title 15, chapter 14, article 1, Arizona Revised Statutes.

2. All persons who are receiving lieu pensions under § 38-761, Arizona Revised Statutes.

### **Sec. 2. Funding**

The benefit increases provided under §1 of this act shall be paid from the current assets of the retirement plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

### **Sec. 3. Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.

## **Laws of 1980, Chapter 238**

### **Section 1. Transfer from state retirement system to retirement plan**

A. All nonretired members, including nonretired members who are on leaves of absence, of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, shall become members of the state retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, on July 1, 1981. The membership transfer shall be made in a manner prescribed by the Arizona state retirement system board. Participation in the plan is required. The employer and employee accounts of such members shall be transferred to the plan on July 1, 1981. If the employer of an employee member of the system is not an employer



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member of the retirement plan, the employer shall, not later than July 1, 1981, comply with such provisions of title 38, chapter 5, article 2.1, Arizona Revised Statutes, as are applicable to become an employer member of the plan and shall continue compliance with such laws. On July 1, 1981, the transfer of members of the system to the plan becomes effective, and the payment of contributions by such employer members and employee participants of the plan commences.

B. In no event may benefits payable under the retirement plan to a nonretired member of the state retirement system who is transferred to membership in the state retirement plan under this section be less than the retirement benefits payable to the member under the retirement system had the member remained a member of the system.

C. This section may not be construed so as to deprive any retired member of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, of any benefits.



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## **Laws of 1981, Chapter 53**

### **Section 1. Credit by certain active members of the state retirement system or plan with previous services as legislative employees**

A. All present active members of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter S, article 2.1, Arizona Revised Statutes, who had previous service as employees of the Arizona legislature but were not members of the state retirement system or the retirement plan during their employment as employees of the Arizona legislature may elect to redeem any part of the prior service by paying into the system the amounts prescribed in subsection B.

B. A present active member of the state retirement system or the retirement plan who elects to redeem any part of his prior service under this section shall pay into the system the amount that both the employer and employee would have been required to contribute to the system for the period of prior service described in subsection A, together with accumulated interest on both, as determined by the fund manager, within the time limitation prescribed in subsection C of this section.

C. The provisions of this section expire on December 31, 1981.

## **Laws of 1981, Chapter 284**

### **Sec. 8. Membership in plan**

All elected state and county officials who are participants of the state retirement plan before the effective date of this act, pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, become members of the elected officials' retirement plan on the effective date of this act

### **Sec. 9. Transfer of monies**

A. The state retirement board shall transfer and credit all unexpended and unencumbered monies credited for the retirement benefits of elected state and county officials under the state retirement plan on August 1, 1981 to the fund manager of the public safety personnel retirement system for deposit to the credit of the elected officials' retirement plan fund.



B. Instead of the transfer of monies required under subsection A, the state retirement board may transfer securities that are of an equivalent value to the fund. Any transfer of securities shall be made with the mutual consent of the fund manager of the public safety personnel retirement system and the Arizona state retirement system board. The securities shall yield the average rate of return of all securities held by the board on August 1, 1981.

## Laws of 1981, Chapter 310

### **Section 1. Permanent retirement benefit increases**

Effective July 1, 1981, each person who was receiving retirement benefits on or before June 30, 1980 and who have fifteen or more years of service as a member or participant of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, shall receive a permanent increase pursuant to § 2 of this act of the base benefit received on June 30, 1981 by such person as a retirement benefit.

### **Sec. 2. Percentage benefit increase; service requirement**

Effective July 1, 1981, as an additional supplement to all persons, pursuant to §1, whose retirement benefit becomes effective during the respective dates indicated in this section, a permanent increase shall be added to the present base benefit which is the product of the present retirement benefit multiplied by the percentage increase applicable according to the effective date of retirement as provided below:

<b><u>Effective date of retirement</u></b>	<b><u>Percentage of present retirement benefit income</u></b>
July 1, 1979 through June 30, 1980	2%
July 1, 1978 through June 30, 1979	3%
July 1, 1977 through June 30, 1978	4%
July 1, 1976 through June 30, 1977	5%
July 1, 1975 through June 30, 1976	6%
July 1, 1974 through June 30, 1975	7%
July 1, 1973 through June 30, 1974	8%
July 1, 1972 through June 30, 1973	9%
July 1, 1971 through June 30, 1972	10%
July 1, 1970 through June 30, 1971	11%
July 1, 1969 through June 30, 1970	12%
July 1, 1968 through June 30, 1969	13%



## **Effective date of retirement**

## **Percentage of present retirement benefit income**

July 1, 1967 through June 30, 1968	14%
July 1, 1966 through June 30, 1967	15%
July 1, 1965 through June 30, 1966	16%
July 1, 1964 through June 30, 1965	17%
July 1, 1963 through June 30, 1964	18%
July 1, 1962 through June 30, 1963	19%
July 1, 1961 through June 30, 1962	20%
July 1, 1960 through June 30, 1961	21%
July 1, 1959 through June 30, 1960	22%
July 1, 1958 through June 30, 1959	23%
July 1, 1957 through June 30, 1958	24%
Prior to July 1, 1957	25%

### **Sec. 3. Funding**

The benefit increases provided under §§ 1 and 2 of this act are payable from the current assets of the retirement plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

### **Sec. 4. Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.



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## Laws of 1982, Chapter 222

### **Section 1. Credit by certain active members of the state retirement system or plan with previous service as legislative employees**

A. All present active members of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, who had previous service as employees of the Arizona legislature but were not members of the state retirement system or the retirement plan during their employment as employees of the Arizona legislature may elect to redeem any part of the prior service by paying into the system the amounts prescribed in subsection B.

B. A present active member of the state retirement system or the retirement plan who elects to redeem any part of his prior service under this section shall pay into the system the amount that both the employer and the employee would have been required to contribute to the system for the period of prior service described in subsection A, together with accumulated interest on both computed at a rate equal to the average of the rates for the years during the period of prior service the employee is redeeming, as determined by the fund manager, within the time limitation prescribed in subsection E.

C. Any member who paid an amount into the system pursuant to Laws of 1981, chapter 53, is entitled to have such payment recomputed and adjusted on the basis of subsection B.

D. The speaker of the house of representatives and the president of the senate may elect to pay the employer contributions for their respective present active employees who had previous service as employees of the Arizona legislature for the period of prior service described in subsection A.

E. This section expires on December 31, 1982.

## Laws of 1982, Chapter 223

### **Section 1. Credit by certain active members of the state retirement system or plan; expiration date**

A. All present active members of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, who had previous service in the system or plan



and received severance benefits upon termination of employment and were reemployed by the same employer within two years of the effective date of the plan may elect to redeem any part of the prior service by paying into the system the amounts prescribed in subsection B of this section.

B. A present active member of the state retirement system or the retirement plan who elects to redeem any part of his prior service under this section shall pay into the system the amount that both the employer and the employee would have been required to contribute to the system or plan for the period of prior service described in subsection A of this section, together with accumulated interest on both, computed at the average of the rates for the years during the period of prior service the employee is redeeming, as determined by the fund manager, within the time limitation prescribed in subsection C of this section.

C. The provisions of this section expire on December 31, 1982.

## Laws of 1982, Chapter 226

### **Section 1. Permanent retirement benefit increases**

Effective July 1, 1982, each person who was receiving retirement benefits on or before June 30, 1981 as a member or participant of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, shall receive a permanent increase pursuant to § 2 of this act.

### **Sec. 2. Percentage benefit increase; service requirement**

Effective July 1, 1982, as an additional supplement to all persons, pursuant to §1 of this section, whose retirement benefit becomes effective during the respective dates indicated in this section, a permanent increase shall be added to the present base benefit which is the product of the present retirement benefit multiplied by the percentage increase applicable according to the effective date of retirement as provided below:

<b><u>Effective Date of Retirement</u></b>	<b><u>Percentage of Present Retirement Benefit Increase</u></b>
July 1, 1980 through June 30, 1981	1.50%
July 1, 1979 through June 30, 1980	2.25%
July 1, 1978 through June 30, 1979	3.00%
July 1, 1977 through June 30, 1978	3.75%
July 1, 1976 through June 30, 1977	4.50%




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<u>Effective Date of Retirement</u>	<u>Percentage of Present Retirement Benefit Increase</u>
July 1, 1975 through June 30, 1976	5.25%
July 1, 1974 through June 30, 1975	6.00%
July 1, 1973 through June 30, 1974	6.75%
July 1, 1972 through June 30, 1973	7.50%
July 1, 1971 through June 30, 1972	8.25%
July 1, 1970 through June 30, 1971	9.00%
July 1, 1969 through June 30, 1970	9.75%
July 1, 1968 through June 30, 1969	10.50%
July 1, 1967 through June 30, 1968	11.25%
July 1, 1966 through June 30, 1967	12.00%
July 1, 1965 through June 30, 1966	12.75%
July 1, 1964 through June 30, 1965	13.50%
July 1, 1963 through June 30, 1964	14.25%
July 1, 1962 through June 30, 1963	15.00%
July 1, 1961 through June 30, 1962	15.75%
July 1, 1960 through June 30, 1961	16.50%
July 1, 1959 through June 30, 1960	17.25%
Prior to July 1, 1959	18.00%

### **Sec. 3. Funding**

All benefit increases provided by this act are payable from the current assets of the retirement plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

### **Sec. 4. Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.





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## Laws of 1983, Chapter 293

### **Sec. 8. Early retirement option**

A. Notwithstanding any provision of law to the contrary, a participant who is currently employed by a participating employer of the Arizona state retirement plan established pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, who is fifty years of age or older or attains age fifty on or before the date this section expires and has at least twenty-five years of total credited service or who is fifty-five years of age or older or attains age fifty-five on or before the date this section expires and has at least five years of total credited service is eligible to elect, in a form and manner prescribed by the Arizona state retirement system board, to receive a pension as specified in subsection B of this section.

B. A participant who is eligible for and elects to receive a pension under this section shall receive a monthly life annuity pension, subject to payment options prescribed by the Arizona state retirement system board, which equals the product of paragraph 1 and paragraph 2 plus paragraph 3 as follows:

1. The number of whole and fractional years of credited past service as defined in section 38-781.01, paragraph 9, Arizona Revised Statutes, and credited future service as defined in section 38-781.01, paragraph 8, Arizona Revised Statutes, times two per cent.

2. The participants's average monthly compensation as defined in section 38-781.01, paragraph 3, Arizona Revised Statutes, except that three contiguous or consecutive years are substituted for five contiguous or consecutive years.

3. Any prior service benefits to which the participant was entitled under the Arizona state retirement system.

C. The Arizona state retirement system board shall administer the provisions of subsections A and B of this section according to the applicable requirements of title 38, chapter 5, article 2.1, Arizona Revised Statutes, which are not otherwise in conflict with this section except that a pension received because of a participant's election under this section shall be reduced pursuant to section 38-781.08, Arizona Revised Statutes.

D. This section expires December 31, 1983.



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## **Laws of 1984, Chapter 12**

### **Sec. 3. Fiscal year 1984-1985; contribution rates**

Notwithstanding any provision of law to the contrary from July 1 1984 through June 30 1985 participant contributions pursuant to section 38-781.04 Arizona Revised Statutes shall be 6.27 per cent of the participant s compensation and employer contributions pursuant to section 38-781.05 Arizona Revised Statutes shall be 6.27 per cent of the compensation of all employees of the employer excluding the compensation of those employees who are members of the retirement system.

## **Laws of 1984, Chapter 397**

### **Section 1. Permanent retirement benefit increases**

Effective July 1 1984 each person who was receiving retirement benefits on or before June 30 1983 pursuant to title 38 chapter 5 article 2 or 2.1, Arizona Revised Statutes, shall receive a permanent increase of forty dollars monthly in the base benefit being received on June 30, 1983.

### **Sec. 2. Funding**

The cost of the benefit increases are payable from the current assets of the applicable retirement system or plan. The cost of the benefit increases shall be added to the unfunded liability of the applicable retirement system or plan.

### **Sec. 3. Emergency**

To preserve the public peace health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.



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## **Laws of 1985, Chapter 270**

### **Section 1. Permanent retirement benefit increases**

Effective July 1 1985, each person who was receiving retirement benefits on or before June 30 1984 pursuant to title 38 chapter 5 article 2 or 2.1, Arizona Revised Statutes, shall receive a permanent increase of forty dollars per month in the base benefit received on June 30 1985.

### **Sec. 2. Funding**

The cost of the benefit increases is payable from the current assets of the applicable retirement system or plan. The cost of the benefit increases shall be added to the unfunded liability of the applicable retirement system or plan.

### **Sec. 3. Emergency**

To preserve the public peace health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.



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## **Laws of 1986, Chapter 13**

**Section 1. Laws 1984, chapter 397 section 2 is amended to read:**

**Sec. 2. Funding**

The cost of the benefit increases are payable from the current assets of the plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

**Sec. 2. Laws 1985, chapter 270 section 2 is amended to read:**

**Sec. 2. Funding**

The cost of the benefit increases is payable from the current assets of the retirement plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

**Sec. 3. Reimbursement by the state retirement plan to the state retirement system**

The state retirement plan shall reimburse the state retirement system from the current assets of the retirement plan for any amounts paid by the system pursuant to Laws 1984, chapter 397, section 2 and Laws 1985, chapter 270 section 2.

**Sec. 4. Emergency**

To preserve the public peace health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.

## **Laws of 1986, Chapter 77**

**Section 1. State retirement; previously forfeited service**

A. All present active members of the state retirement system established under title 38, chapter 5 article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5 article 2.1, Arizona Revised Statutes, who had previous service in the system or plan and received severance benefits on termination of employment may elect to redeem any part of the previously forfeited service by paying into the system the amounts prescribed in subsection B.



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B. A present active member of the state retirement system or the retirement plan who elects to redeem any part of his previously forfeited service under this section shall pay into the system the amount that both the employer and the employee would have been required to contribute to the system or plan for the period of previously forfeited service described in subsection A together with accumulated interest on both computed at the average of the rates for the years during the period of previously forfeited service the employee is redeeming as determined by the fund manager within the time limitation prescribed in subsection C.

C. This section expires from and after December 31 1986.

## **Laws of 1986, Chapter 88**

### **Sec. 4. Transfer of assets**

Notwithstanding any other statute the transfer of an eligible state fire fighter to the public safety personnel retirement system pursuant to this act is not effective until the assets of the state fire fighter are transferred to the public safety personnel retirement fund. For purposes of this act the assets of a state fire fighter to be transferred to the public safety personnel retirement fund consist of:

1. All of the employee and employer contributions together with any supplemental credits accrued plus interest to the date of the transfer for all total service credits being transferred.

2. If the amount of the contributions to the Arizona state retirement plan for the period of total service credits as a state fire fighter is less than the amount which would have been paid into the public safety personnel retirement system and fund based on the salary and contributions- as a state fire fighter during the period of service as a state fire fighter as if the person were a member of the public safety personnel retirement system the person making the application shall pay the difference with interest on that amount at the rate of the net effective yield of the fund as published in the latest annual report compounded each year as computed by the fund manager into the public safety personnel retirement system and fund. Credited service shall not be applied to the applicant's account until such time as complete repayment is made to the fund.

## **Laws of 1986, Chapter 287**

### **Section 1. Permanent retirement benefit increases**



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A. Effective July 1, 1986 each person who was receiving retirement benefits including survivors benefits on or before June 30, 1985 pursuant to title 38 chapter 5 article 2 or 2.1 Arizona Revised Statutes shall receive a permanent increase in their monthly benefit equal to sixty cents for each year of credited future service credited past service and prior service plus sixty cents for each year the person has been retired as of June 30, 1986. The sum of the years of credited future service credited past service and prior service and years retired shall be rounded to the nearest whole number.

B. Notwithstanding the provisions of subsection A of this section the maximum monthly benefit increase shall not exceed eight per cent of the current monthly benefit.

### **Sec. 2. Funding**

The cost of the benefit increases is payable from the current assets of the retirement plan. The cost of the benefit increases shall be added to the unfunded liability of the retirement plan.

### **Sec. 3. Emergency**

To preserve the public peace health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.

## **Laws of 1986, Chapter 325**

### **Sec. 4. Transfer of assets**

On the effective date of this act an employee's contributions made on his behalf by any employer and his prior service credits accumulated under the state retirement system pursuant to title 38 chapter 5 article 2, Arizona Revised Statutes, or the state retirement plan pursuant to title 38 chapter 5 article 2.1, Arizona Revised Statutes, plus interest to the date of transfer shall be transferred to the corrections officer retirement plan fund.

### **Sec. 5. Retroactivity**

This act is effective retroactively to July 1, 1986.



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## Laws of 1987, Chapter 274

### **Sec. 5. Repeal**

Section 38-781.36 Arizona Revised Statutes is repealed.

### **Sec. 7. Retroactivity**

The provisions of this act are effective retroactively to June 30, 1987.

### **Sec. 8. Recovery of service credits for participants who continued to work through age seventy**

A. Employees who have continued to work past the age of seventy prior to the enactment of this section without drawing benefits or making contributions to the system or plan shall be entitled to buy back service credits previously denied them for years worked beyond age seventy by paying into the system or plan the increase in the actuarial present value of benefits computed at the time of retirement which results from adding the number of years or partial years of credited service to which such employees are entitled under this subsection.

B. The employing agency or department may budget for and pay into the system or plan all or any part of the actuarial present value required by subsection A of this section.

C. Notwithstanding the definition of average monthly compensation prescribed by section 38-781.01, paragraph 3 Arizona Revised Statutes any compensation earned beyond the age of seventy by employees referenced in subsection A of this section shall be considered in determining the average monthly compensation.

D. This section expires from and after September 30, 1988.

## Laws of 1987, Chapter 281

### **Section 1. Permanent retirement benefit increases**

A. Effective July 1, 1987, each person who was receiving retirement benefits on or before June 30, 1986 pursuant to title 38, chapter 5 article 2 or 2.1 Arizona Revised Statutes shall receive a permanent increase in their monthly benefit equal to sixty cents for each year of credited future service credited past service and prior service plus sixty cents for each year the



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person has been retired as of June 30, 1987. The sum of the years of credited future service credited past service and prior service and years retired shall be rounded to the nearest whole number.

B. Notwithstanding the provisions of subsection A of this section the monthly benefit increase for any retired member shall not exceed ten per cent of the current monthly benefit nor shall it be less than two per cent.

### **Sec. 2. Funding**

The cost of the benefit increases shall be added to the applicable employer cost of the retirement plan as determined pursuant to section 38-781.05, Arizona Revised Statutes.

### **Sec. 3. Emergency**

To preserve the public peace health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure to take effect as provided by law.

## **Laws of 1987, Chapter 319**

### **Section 1. Retirement contribution rate; reduction of appropriations; state aid to schools; reversion; adjustment for appropriations report**

A. Notwithstanding sections 38-781.04 and 38-781.05, Arizona Revised Statutes, the actuarially determined percentage of compensation for fiscal year 1987-1988 for employers and employees participating in the state retirement plan shall be reduced by subtracting one and sixteen hundredths percentage points from the actuarially determined percentage of compensation.

B. Notwithstanding section 15-1628, Arizona Revised Statutes, the amount appropriated for fiscal year 1987-1988 to each university for contribution to optional retirement programs under the jurisdiction of the Arizona board of regents shall be reduced by subtracting an amount equivalent to one and sixteen hundredths per cent of the compensation of employees participating in optional retirement programs from the amount appropriated for contribution to optional retirement programs all of which shall be reflected in the general fund appropriation.

C. For fiscal year 1987-1988, the governing board of each community college district shall determine the estimated amount of reduction in employer contributions as provided in subsection A of this section and report such amount to the state board of directors for community





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colleges by March 15. The state board of directors for community colleges shall reduce each district's allocation of state aid from the monies appropriated for the cost of maintaining the district as prescribed in section 15-1466, Arizona Revised Statutes, by the amount reported by each district.

D. School district expenditures for employer contributions to the state retirement plan and state aid shall be reduced for fiscal year 1987-1988 as follows:

1. The governing board of each school district shall report to the state board of education by October 1, 1987 estimated employer contribution savings for fiscal year 1987-1988. The estimated employer contribution savings is equal to the amount of the reduction in employer contributions for school district employees required for fiscal year 1987-1988 as provided in subsection A of this section.

2. Before May 1, 1988, the governing board shall calculate a final estimate of employer contribution savings as provided in paragraph 1 of this subsection. The county school superintendent may adjust the final estimate of employer contribution savings and if an adjustment is made the adjusted estimate shall be used as the final estimate of employer contribution savings.

3. Before May 1, 1988, the governing board shall decrease its revenue control limit and its district support level by the amount of the final estimate of employer contribution savings as prescribed in paragraph 2 of this subsection. The governing board shall adjust expenditures for the current fiscal year based upon the reduction in the revenue control limit.

4. Equalization assistance and apportionment of state aid for fiscal year 1987-1988 as prescribed in title 15 chapter 9 article 5, Arizona Revised Statutes, shall be determined based upon the revenue control limit and the district support level as determined in paragraph 3 of this subsection.

5. If a school district does not qualify for equalization assistance after the reduction of the revenue control limit and district support level as provided in paragraph 3 of this subsection the additional state aid to which the district is entitled for fiscal year 1 -1988 as provided in section 15-972, Arizona Revised Statutes, shall be reduced by an amount equal to the final estimate of employer contribution savings less the amount if any of equalization assistance to which the district was entitled before the reduction of the revenue control limit and the district support level as provided in paragraph 3 of this subsection.



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6. The state board of education may begin reducing the apportionment of state aid with the October 15 apportionment as provided in section 15-973, Arizona Revised Statutes, based upon the estimate provided in paragraph 1 of this subsection.



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## **Laws of 1989, Chapter 219**

### **Section 1. Appropriation; purpose**

In addition to the appropriation made by Laws 1988 chapter 260 section 1 subdivision 15 the sum of one hundred sixty-one thousand two hundred dollars is appropriated for fiscal year 1988-1989 from the state retirement system administration account to the state retirement system for personal services and equipment.

## **Laws of 1989, Chapter 310**

### **Sec. 17. Minimum retirement benefit**

A. The Arizona state retirement system shall recalculate the benefits of all members of the Arizona state retirement plan who retired before June 30, 1989 and who had at least ten years of credited service using the present plan factors for the option used for the member's benefit on the effective date of this act and an average monthly compensation of one thousand dollars. If the benefit the member is presently receiving is less than the amount calculated the member's benefit shall be increased to the calculated amount. If the benefit payment is more than the calculated amount the member's benefit remains the same.

B. The Arizona state retirement system shall recalculate the benefit payment for beneficiaries in the same manner as provided for in subsection A with the appropriate reductions for the option chosen.

C. A member of the state retirement system who retired before June 30, 1989 and who had at least ten years of credited service may transfer to the Arizona state retirement plan and have his benefit including amounts received through supplemental credits recalculated pursuant to subsection A. A transfer to the Arizona state retirement plan pursuant to this subsection is irrevocable.

D. A system beneficiary is transferred to the Arizona state retirement plan and his benefits shall be recalculated In the same manner as other plan beneficiaries as provided In subsection B.



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**Sec. 18. Permanent retirement benefit increases; funding**

A. Effective July 1, 1989 each person who was receiving retirement benefits on or before June 30, 1988 pursuant to title 38 chapter 5 article 2 or 2.1 Arizona Revised Statutes is entitled to receive a permanent increase of two per cent of his base benefit being received on December 31, 1988.

B. Effective July 1, 1990 each person who was receiving retirement benefits on or before June 30, 1989 pursuant to title 38 chapter 5 article 2 or 2.1, Arizona Revised Statutes, is entitled to receive a permanent increase of two per cent of his base benefit being received on June 30, 1990.

C. The cost of the benefit increase in subsections A and B of this section is payable from the current assets of the retirement plan. The cost of the benefit increase shall be added to the unfunded liability of the retirement plan.

**Sec. 19. Permanent tax equity benefit allowance for retirees; funding**

A. Retroactive to January 1, 1989 each person receiving retirement benefits on or before January 1, 1989 pursuant to title 38 chapter 5 article 2 or 2.1, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance consisting of a permanent increase of three per cent in his base benefit being received on January 1, 1989. The cost of the benefit increase provided by this subsection is payable from the assets of the applicable retirement system or plan. The cost of the benefit increase shall be added to the unfunded liability of the applicable retirement system or plan.

B. Retroactive to January 1, 1989 each person receiving retirement benefits on or before January 1, 1989 pursuant to title 38 chapter 5 article 3, Arizona Revised Statutes, and former title 38 chapter 5 article 3.1, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance consisting of a permanent increase of three per cent in his base benefit being received on January 1, 1989. The cost of the benefit increase provided by this subsection is payable from the current assets of the elected officials retirement plan.

C. Retroactive to January 1, 1989 each person receiving retirement benefits on or before January 1, 1989 pursuant to title 38 chapter 5 article 4, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance consisting of a permanent increase of three per cent in his base benefit received on January 1, 1989. The cost of the benefit increase provided by this subsection is payable from the applicable employer cost of the public safety personnel retirement system.



D. Retroactive to January 1, 1989, each person who was receiving retirement benefits on or before January 1 1989 pursuant to title 38 chapter 5 article 6, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance consisting of a permanent increase of 1.5 per cent of his base benefit being received on January 1, 1989. The cost of the benefit increase provided by this subsection is payable from the current assets of the corrections officer retirement plan.

E. Each person that retires after January 1, 1989 and before the effective date of this act and who receives retirement benefits pursuant to title 38, chapter 5 article 2 or 2.1, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance retroactive to the date of retirement consisting of a permanent increase of three per cent of his base benefit. The cost of the benefit increase provided by this subsection is payable from the assets of the applicable retirement system or plan. The cost of the benefit increase shall be added to the unfunded liability of the applicable retirement system or plan.

F. Each person that retires after January 1, 1989 and before the effective date of this act and who receives retirement benefits pursuant to title 38, chapter 5 article 3, Arizona Revised Statutes, and former title 38, chapter 5 article 3.1, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance retroactive to the date of retirement consisting of a permanent increase of three per cent of his base benefit. The cost of the benefit increase provided by this subsection is payable from the current assets of the elected officials retirement plan.

G. Each person that retires after January 1, 1989 and before the effective date of this act and who receives retirement benefits pursuant to title 38, chapter 5 article 4, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance retroactive to the date of retirement consisting of a permanent increase of three per cent of his base benefit. The cost of the benefit increase provided by this subsection is payable from the applicable employer cost of the public safety personnel retirement system.

*Note: Retroactively effective to January 1, 1989.*

## **Sec. 20. Normal retirement benefit; applicability**

A. Notwithstanding section 38-781.07, Arizona Revised Statutes, a retirement plan participant who meets the requirements for pension at normal retirement is entitled to receive a life annuity which equals the sum of paragraphs 1 and 2 multiplied by paragraph 3 plus paragraph 4 when the paragraphs are defined as follows:

1. The number of whole and fractional years of credited past service times 2.2 per cent.



2. The number of whole and fractional years of credited future service times 2.2 per cent.
3. The participant's average monthly compensation.
4. Any prior service benefits to which the participant was entitled under the system.

B. A retirement plan participant who is eligible for early retirement and whose age and years of total credited service equals at least eighty is entitled to receive a life annuity computed pursuant to subsection A except that the pension shall be reduced at the rate of three per cent for each unit of one or fraction of one by which the sum is less than eighty-five.

C. For the purposes of this section the definitions prescribed in section 38-781.01, Arizona Revised Statutes, apply.

*Note: Retroactively effective to May 15, 1989 and applies only to those participants who were employed by a plan employer on May 14, 1989. Repealed from and after November 14, 1989.*

**Sec. 21. Reduction of appropriations; state aid to schools; reversion; adjustment for appropriations; report**

A. For fiscal year 1989-1990 the governing board of each community college district shall determine the estimated amount of reduction in employer contributions provided pursuant to section 38-781.05 subsection E, Arizona Revised Statutes, and report this amount to the state board of directors for community colleges by October 1, 1989. The state board of directors for community colleges shall reduce each district's allocation of state aid from the monies appropriated for the cost of maintaining the district as prescribed in section 15-1466, Arizona Revised Statutes, by the amount reported by each district.

B. School district expenditures for employer contributions to the state retirement plan and state aid shall be reduced for fiscal year 1989-1990 as follows:

1. The governing board of each school district shall report to the state board of education by October 1, 1989 estimated employer contribution savings for fiscal year 1989-1990 based on a rate reduction from 5.09 per cent to two per cent.

2. Before May 1, 1990 the governing board shall calculate a final estimate of employer contribution savings as provided in paragraph 1. The county school superintendent may adjust the final estimate of the employer contribution savings and if an adjustment is made the adjusted estimate shall be used as the final estimate of employer contribution savings.



3. Before May 15, 1990 the governing board shall decrease its revenue control limit and its district support level by the amount of the final estimate of employer contribution savings as prescribed in paragraph 2. The governing board shall adjust expenditures for the current fiscal year based on the reduction in the revenue control limit.

4. Equalization assistance and apportionment of state aid for fiscal year 1989-1990 as prescribed in title 15 chapter 9 article 5, Arizona Revised Statutes, shall be determined based on the revenue control limit and the district support level as determined in paragraph 3.

5. If a school district does not qualify for equalization assistance after the reduction of the revenue control limit and district support level as provided in paragraph 3 the additional state aid to which the district is entitled for fiscal year 1989- 1990 as provided in section 15- 972 Arizona Revised Statutes shall be reduced by an amount equal to the final estimate of employer contribution savings less the amount if any of equalization assistance to which the district was entitled before the reduction of *the revenue* control limit and the district support level as provided in paragraph 3.

6. The state board of education may begin reducing the apportionment of state aid with the October 15, 1989 apportionment as provided in section 15-973, Arizona Revised Statutes, based on the estimate provided in paragraph 1.

*Note: Retroactively effective to from and after June 30, 1989.*

## **Sec. 22. Legislative council study committee on the state retirement system; purpose**

A. A legislative council joint study committee on the state retirement system is established consisting of five public members who are knowledgeable in public or private retirement systems and are appointed jointly by the president of the senate and the speaker of the house of representatives, five members of the senate who are appointed by the president of the senate and five members of the house of representatives who are appointed by the speaker of the house of representatives. The president of the senate and the speaker of the house of representatives shall each appoint one member of the committee as cochairman.

B. The committee shall evaluate the state retirement system and its structure, operation and accomplishments. In particular, the committee shall examine:

1. The current benefit structure of the system and compare it to those benefits provided by other state retirement systems and private pension systems.



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2. The partial health and accident premium payments authorized for certain retired members of the Arizona state retirement plan and their dependents pursuant to Laws 1988, chapter 277, section 3 and Laws 1988, chapter 307, section 1. The committee shall also examine the effect on the Arizona state retirement system and current retirees if the benefits authorized pursuant to those laws were modified or eliminated but replaced with another benefit program.

3. The sufficiency of the statutes relating to the Arizona state retirement system and plan and whether or not the existing statutes are being followed and implemented.

4. The composition, function and effectiveness of the Arizona state retirement system board and the investment advisory council.

5. The policies regarding post-retirement benefit increases for retired persons.

6. The policies regarding early retirement incentives with a particular examination on the feasibility of implementing a corresponding actuarial reduction in benefits.

7. Whether the present funding of the Arizona state retirement system adequately ensures that advanced funding of the system is provided on a sound actuarial basis.

8. The feasibility of requiring by legislation or house and senate rule a requirement that all proposed retirement legislation be accompanied by actuarial cost estimates produced by an independent actuary responsible only to the legislature indicating the actuarial assumptions used, the method used to compute the cost, the potential annual cost rates and the total additional liability created by the proposal.

9. The present investment guidelines of the system with a policy goal of providing for allowable investments in order to provide timely payment to the system's beneficiaries in their retirement.

10. The implications on continuing the state tax exempt status on pensions received by retired members of the Arizona state retirement system.

11. The feasibility of increasing benefits to future retirees to hold them harmless as a result of taxing the benefits they receive on retirement.

12. Any other areas the committee determines is necessary in order to properly evaluate the Arizona state retirement system.





C. Members of the committee are not eligible to receive compensation but are eligible for reimbursement for expenses pursuant to title 38, chapter 4, article 2, Arizona Revised Statutes.

D. The committee shall provide a report of its findings and any recommendations to the president of the senate and the speaker of the house of representatives on or before December 31, 1989.

E. The staff and the actuary employed by the Arizona state retirement system shall provide the committee with any necessary technical services. The committee may use personnel employed by the legislative council for necessary technical, administrative and operational services and, with the approval of the legislative council, may hire consultants for technical or legal services as necessary from monies appropriated to the legislative council. The legislature shall appropriate necessary monies to reimburse the legislative council for the hiring of the consultants from the Arizona state retirement system fund.

*Note: Repealed from and after December 31, 1989.*

## **Sec. 29. Early retirement program; report**

No later than December 31, 1989, the Arizona state retirement system board shall report to the president of the senate and the speaker of the house of representatives on the utilization of the increased retirement benefit formula program established pursuant to section 20 of this act. The report shall include but shall not be limited to the following information:

1. The number of employees that were eligible to utilize the program and their respective employers.
2. The actual number of employees that utilized the program and their respective employers.
3. An analysis of the benefits payable to employees that utilized the program, including a comparison of such benefits to those benefits for which the employee would otherwise have been eligible.
4. An analysis of the salary levels of the employees that were eligible for the program and of those employees that actually utilized the program.



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## **Laws of 1990, Chapter 68**

**Section 1. Laws 1989, chapter 310, section 27 is amended to read:**

**Sec. 27. Retroactivity and applicability**

A. Section 20 of this act [pursuant to § 38-781.07] applies retroactively to May 15, 1989 and applies only to those participants who were employed by a plan employer on May 14, 1989.

B. Section 5 of this act pursuant to [§38-781.42] is effective retroactively for participants of the Arizona state retirement system or plan who are currently active members with an employer of the Arizona state retirement system or plan.

C. Section 38-781.05, Arizona Revised Statutes, as amended by this act, is effective retroactively to from and after June 30, 1989.

D. Section 38-843, Arizona Revised Statutes, as amended by this act, is effective retroactively to from and after June 30, 1989.

E. Section 21 of this act [pursuant to § 38-781.05] is effective retroactively to from and after June 30, 1989.

F. Section 19 of this act [regarding the 3% Hold Harmless option] is effective retroactively to January 1, 1989.

G. Section 18 of this act [regarding the 2% increase] is effective retroactively to July 1, 1989.

## **Laws of 1990, Chapter 183**

**Section 1. Appropriation; purpose**

In addition to the appropriation made by Laws 1989, chapter 311, section 1, subdivision 16, the sum of one hundred sixteen thousand six hundred dollars is appropriated for fiscal year 1989-1990 from the state retirement system administration account to the state retirement system for the following purposes:

1. For personal services and employee related expenses, eighty thousand dollars.



2. For computer terminals, fourteen thousand six hundred dollars.

3. For personal services and expenses related to a data processing manager position and an administrative assistant position for data processing system development, twenty-two thousand dollars.

## **Laws of 1990, Chapter 194**

### **Sec. 2. Appropriation; purpose**

The sum of fifty-seven thousand eight hundred twenty dollars is appropriated from the state retirement system administration account to the legislative council for reimbursement for a consulting contract for examining the state retirement system pursuant to Laws 1989, chapter 310, section 22, subsection E.

### **Sec. 4. Exemptions from lapsing; reversion**

B. The appropriation made by section 2 of this act is exempt from the provisions of section 35-190. Arizona Revised Statutes, relating to lapsing of appropriations.

### **Sec. 5. Emergency**

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

## **Laws of 1990, Chapter 217**

### **Section 1. Permanent tax equity benefit allowance for retirees of the Arizona state retirement system; funding**

Each person who retires after September 14, 1989 but before September 15, 1990 and who receives retirement benefits pursuant to title 38, chapter 5, article 2 or 2.1, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance retroactive to the date of retirement consisting of a permanent increase of three per cent of his base benefit. The cost of the benefit increase provided by this section is payable from the assets of the applicable retirement system or plan. The cost of the benefit increase shall be added to the unfunded liability of the applicable retirement system or plan.



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## **Laws of 1991, Chapter 129**

### **Section 1. Declaration of instrumentality**

The Arizona interscholastic association is declared to be an instrumentality for retirement purposes as provided by section 38- 781.03, subsection B, paragraph 2, Arizona Revised Statutes. Persons regularly employed by the Arizona interscholastic associations are participants of the state retirement plan and are subject to the provisions of title 38, chapter 5, article 2.1, Arizona Revised Statutes.



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## Laws of 1992, Chapter 27

### Section 1. Level income option; applicability

A. Notwithstanding section 38-781.10, subsection G, Arizona Revised Statutes, a member of the Arizona state retirement plan established pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, who retired before age sixty-two and from and after April 30, 1990 may elect to convert the retirement benefit otherwise payable to him after retirement into a reduced retirement benefit that is its actuarial equivalent and is of such amount that, with his primary Insurance amount under title 11 of the social security act, the member will receive, as far as possible, the same amount each year before and after the primary insurance amount begins.

B. The benefit calculated pursuant to subsection A of this section shall be adjusted to provide for no actuarial cost to the system.

### Sec. 2. Delayed repeal

This act is repealed from and after December 31, 1992.

## Laws of 1992, Chapter 137

### Section 1. State retirement; previously forfeited service

A. All present active members of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, who had previous service in the system or plan and received severance benefits on termination of employment may elect to redeem any part of the previously forfeited service by paying into the system the amounts prescribed in subsection B.

B. A present active member of the state retirement system or the retirement plan who elects to redeem any part of his previously forfeited service under this section shall pay into the system the amount that both the employer and the employee would have been required to contribute to the system or plan for the period of previously forfeited service described in subsection A, together with accumulated interest on both, computed at the average of the rates for the years during the period of previously forfeited service the employee is redeeming, as determined by the Arizona state retirement system board, within the time limitation prescribed in section 3 of this act.



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**Sec. 2. State retirement; buy back for present active members**

A. All present active members of the state retirement system established under title 38, chapter 5, article 2, Arizona Revised Statutes, or the retirement plan established under title 38, chapter 5, article 2.1, Arizona Revised Statutes, who were terminated from employment on or before December 31, 1992 as a result of a required reduction in force are entitled to receive credited service for all or part of the period of unemployment if the employee had five or more years of credited service at the time of termination, employment was resumed with a participating employer within two years of the termination and the employee elects to pay into the system the amounts prescribed In subsection B.

B. A present active member of the state retirement system or the retirement plan who meets the requirements of subsection A is entitled to receive credited service pursuant to this section if the member pays into the system the amount that both the employer and the employee would have been required to contribute to the system or plan for the period of unemployment described in subsection A, based on the salary the member received before the member was terminated as a result of a required reduction in force, together with accumulated Interest on both, computed at the average of the rates for the years during the period of unemployment for which the member is receiving credited service, as determined by the Arizona state retirement system board, within the time limitation prescribed in section 3 of this act.

**Sec. 3. Delayed repeal**

This act is repealed from and after December 31, 1994.

## **Laws of 1992, Chapter 309**

**Section 1. Permanent retirement benefit increase; funding**

A. Effective November 1, 1992, each person who was receiving retirement benefits or disability benefits on or before October 31, 1992 pursuant to title 38, chapter 5, article 2.1, Arizona Revised Statutes, is entitled to receive a benefit increase of five percent of his benefit being received on October 31, 1992.

B. The cost of the benefit increase in subsection A of this section is payable from the current assets of the retirement plan. The cost of the benefit increase shall be added to the unfunded liability of the retirement plan.



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## Laws of 1992, Chapter 339

### Section 1. Minimum retirement benefit

A. The monthly retirement benefit of a person who retired from the Arizona state retirement plan and who on the effective date of this act is at least seventy-five years of age and had at least twenty years of credited service shall be at least six hundred dollars. The monthly retirement benefit of a person who retired from the Arizona state retirement plan and who on the effective date of this act is at least seventy-five years of age and had at least fifteen years but less than twenty years of credited service shall be at least five hundred dollars. The monthly retirement benefit of a person who retired from the Arizona state retirement plan and who on the effective date of this act is at least seventy-five years of age and had at least ten years but less than fifteen years of credited service shall be at least three hundred fifty dollars.

B. If the minimum retirement benefit pursuant to subsection A of this section is greater than the retired person's current monthly retirement benefit, the retired person is eligible to receive an increase in his current monthly benefit equal to the minimum benefit amount. If the person's current monthly benefit is greater than the minimum benefit amount, the person's benefit remains the same.

C. The benefit payment for beneficiaries of the Arizona state retirement plan shall be recalculated in the same manner as provided for in subsections A and B with the appropriate reductions for the option chosen, except the age requirement shall be based on the age of the beneficiary.

D. The minimum monthly retirement benefit provided by subsection A of this section applies to a member of the state retirement system who retires before the effective date of this act, who transfers to the Arizona state retirement plan and who meets the age and credited service requirements of subsection A of this section. A transfer to the Arizona state retirement plan pursuant to this subsection is irrevocable.

E. A beneficiary of the state retirement system that transfers to the Arizona state retirement plan shall have his benefits recalculated in the same manner as other plan beneficiaries as provided in subsection C. A transfer to the Arizona state retirement plan pursuant to this subsection is irrevocable.

F. For the purposes of this section, the definitions provided in section 38-781.01, Arizona Revised Statutes, apply.



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**Sec. 2. Tax equity benefit allowance**

A. Each person who retires after September 14, 1991 but before October 31, 1992 and who receives retirement benefits pursuant to title 38, chapter 5, article 2, 2.1 or 3, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance retroactive to the date of retirement consisting of a permanent increase of three per cent of his base benefit. The cost of the benefit increase provided by the subsection is payable from the assets of the applicable retirement system or plan. The cost of the benefit increase shall be added to the unfunded liability of the applicable retirement system or plan.

B. Each person who retires after September 14, 1991 but before October 31, 1992 and who receives retirement benefits pursuant to title 38, chapter 5, article 6, Arizona Revised Statutes, is entitled to receive a tax equity benefit allowance retroactive to the date of retirement consisting of a permanent increase of one and one-half per cent of his base benefit. The cost of the benefit increase provided by this subsection is payable from the assets of the retirement plan. The cost of the benefit increase shall be added to the unfunded liability of the retirement plan.

**Sec. 3. Retroactivity**

Laws 1992, chapter 137, section 1, is effective retroactively to May 1, 1992.

**Sec. 4. Delayed repeal**

Section 1 of this act is repealed from and after December 31, 1992.





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## Laws of 1995, Chapter 32

### **Sec. 24. Savings clause; beneficiary longevity reserve account; definitions**

A. The repeal of sections 38-744, 38-745, 38-746. 38-746.01, 38-747 through 38-752. 38-752.01, 38-753, 38-754, 38-758, 38-759. 38-760, 38-762 through 38-775, 38-777 and 38-778, Arizona Revised Statutes. Does not affect the rights and duties of members of the state highway patrol retirement system and the Arizona state retirement system that matured or proceedings that were begun before the effective date of this act.

B. ASRS shall maintain the beneficiary longevity reserve account as a part of its accounts for the purpose of maintaining benefits payable to retired system members as follows:

1. The following amounts shall be credited to the beneficiary longevity reserve account:

(a) Interest attributable to the system that is earned by ASRS in excess of the annual rate of interest adopted by the board.

(b) Actuarial gains experienced in the operation of the system as determined by the actuary employed by the board.

(c) Other available system funds.

2. ASRS shall charge the following amounts to the beneficiary longevity reserve account:

(a) Actuarial losses experienced in the operation of the system as determined by the actuary employed by the board.

(b) Any surplus amounts in the beneficiary longevity reserve account that may be allocated by the board to increase retirement benefits for members pursuant to paragraph 3 of this subsection.

3. The board, after giving due consideration to the recommendation of its actuary, shall determine the amount required in the beneficiary longevity reserve account to maintain benefits payable to retired system members. Any surplus in the beneficiary longevity reserve account in excess of the amount determined by the actuary may be allocated by the board to increase retirement benefits for system members. The portion of the surplus to be allocated with respect to retired system members shall bear the same ratio to the total of the surplus as the retirement account reserves applicable to those retired system members bear to the retirement account



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reserves applicable to all system members, and the balance of the surplus shall be allocated with respect to system members who retire after the allocation. The portion of the surplus to be allocated with respect to retired system members shall be allocated in the ratio that each retired system member's retirement account reserve bears to the total retirement account reserves of all retired system members and shall be used to provide a life income to cease at the retired system member's death in an amount determined by the interest and life expectancy tables applicable on the date of allocation and based on the attained age of the retired system member on that date. The portion of the surplus to be allocated with respect to system members retiring after the allocation shall be allocated in the ratio that the balance in each such system member's retirement account arising from employer contributions bears at the time of allocation to the total of those balances of all those system members and shall be credited as an employer contribution to each such system member's retirement account. The life income or increased amount of retirement benefits may be reduced or eliminated if subsequent experience determines that the account is inadequate to maintain necessary reserves and to pay the life incomes or benefits.

4. Notwithstanding paragraph 3 of this subsection. With respect to retired system members and their beneficiaries receiving retirement benefits, the board may allocate any surplus to those retired system members and their beneficiaries that may arise due to a change in the interest and life expectancy tables that reduced liabilities, other than liabilities for prior service, to maintain benefits payable to those retired system members and their beneficiaries on the date of the change. The surplus shall:

(a) Be applied for each retired system member and retired system member's beneficiary, in the ratio that the retired system member's or retired system member's beneficiary's reserve held in the retirement account bears to the total reserves for all retired system members and their beneficiaries.

(b) Provide income in an amount determined by the interest and life expectancy tables applicable on the date of allocation and based on the attained age of the retired system member or retired system member's beneficiary on that date.

(c) Be payable in a manner that is suitable to the retired system member's or retired system member's beneficiary's method of payment. The income may be reduced or eliminated if subsequent experience determines that the account is inadequate to maintain necessary reserves and to pay the income.

E. Notwithstanding section 38-713, Arizona Revised Statutes, as added by this act, all persons serving as members of the Arizona state retirement system board on the effective date of this act may continue to serve until the expiration of their normal terms. The governor shall make all subsequent appointments as prescribed by statute.



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F. For the purposes of this section:

1. **"ASRS"** means the Arizona state retirement system established by title 38, chapter 5, article 2, Arizona Revised Statutes.

2. **"Board"** means the ASRS board established in section 38-713. Arizona Revised Statutes.

3. **"Prior service"** means service for this state or a political subdivision of this state before membership in the system.

4. **"Retirement account"** means the combined member and employer contributions with interest or earnings on the contributions including allocations credited as employer contributions pursuant to this section.

5. **"System"** means the defined contribution program administered by ASRS.

#### **Sec. 25. Repeal**

Laws 1994, chapter 357, section 3 is repealed.

#### **Sec. 26. Delayed repeal**

Section 38-767, Arizona Revised Statutes, as added by this act. is repealed from and after June 30, 2000.

#### **Sec. 27. Emergency**

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

## **Laws of 1995, Chapter 134**

#### **Sec. 16. Benefit increases**

A. Members of the Arizona state retirement system who were eligible to receive long-term disability benefits pursuant to section 38-781, Arizona Revised Statutes, as repealed by this act, on or before June 30, 1995 are eligible to receive an increased benefit equal to the



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benefit increase provided to retired members pursuant to section 38-767, Arizona Revised Statutes, as amended by this act.

B. The benefit increases provided by subsection A of this section shall be added to the liabilities of the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, as added by this act.

#### **Sec. 17. Employer and member contributions**

A. Notwithstanding sections 38-736 and 38-737, Arizona Revised Statutes, for fiscal year 1995-1996, the contribution rate for the Arizona state retirement system established pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes, is 3.36 per cent of payroll for both employers and members of the Arizona state retirement system.

B. For fiscal year 1995-1996, the contribution rate for employers and members covered by the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, as added by this act, is .49 per cent of payroll for both employers and members.

#### **Sec. 18. Transfer of members**

On October 1, 1995 all members of the Arizona state retirement system who participated in the long-term disability program established by section 38-781, Arizona Revised Statutes, as repealed by this act, shall be transferred to the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, as added by this act.

#### **Sec. 19. Legislative intent; election; definitions**

A. The purpose of section 38-771, Arizona Revised Statutes, as amended by this act, is to preserve the benefit rights of nonretired members of the system who were transferred from the system to the plan pursuant to Laws 1980, chapter 238. Laws 1980, chapter 238 guaranteed that benefits payable under the plan to a member of the system who was transferred to membership in the plan under that act would not be less than the retirement benefits payable to the member under the system if the member had remained a member of the system.

B. The legislature does not intend that the benefit rights of members of the plan who were transferred from the system to the plan be affected by this act.

C. In order to comply with article II, section 25, Constitution of Arizona, the Arizona state retirement system shall hold an election pursuant to section 38-771, Arizona Revised



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Statutes, as amended by this act, for members of the plan with benefit rights established by Laws 1980, chapter 238.

D. For the purpose of this section:

1. **"Plan"** means the defined benefit program established pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes.

2. **"System"** means the defined contribution program administered by the Arizona state retirement system.

**Sec. 20. Emergency**

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

## **Laws 1995, Chapter 205**

**Sec. 15. Joint legislative study committee on state retirement systems; members; duties; report**

A. The joint legislative study committee on state retirement systems is established for the purpose of analyzing issues affecting the Arizona state retirement system, the public safety personnel retirement system, the corrections officer retirement plan and the elected officials' retirement plan.

B. The joint legislative study committee on state retirement systems shall consist of the following members:

1. The chairperson of the senate finance committee to serve as co-chairperson.
2. The chairperson of the house of representatives government operations committee to serve as co-chairperson.
3. The chairperson of the senate appropriations committee.
4. The chairperson of the house of representatives appropriations committee.



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5. Five additional members of the senate appointed by the president of the senate and five additional members of the house of representatives appointed by the speaker of the house of representatives. No more than two of the additional members of each house may be members from the majority party.

C. The committee shall recommend ways in which the benefits and other provisions under each of the state retirement systems should be equalized and determine those areas where differences are justified. In making recommendations and determinations, the study committee shall consider the following:

1. Retiree health insurance premium subsidy amounts.
2. Minimum benefit amounts.
3. The qualifications for normal and early retirement.
4. The formulas used to calculate benefits.
5. Post-retirement benefit increases.
6. Provisions for transfer between state retirement systems.

7. Any other benefit or provision determined necessary for consideration and study by the committee.

D. In addition to the study items listed under subsection C of this section, the committee shall also study the following:

1. The policy of providing tax equity "hold harmless" benefit increases in response to the taxation of pension income. The study committee shall request a legal determination of the state's liability, if any, to retirees and a fiscal analysis of any determined liability.

2. The differences between defined benefit plans and defined contribution plans and whether the State of Arizona should consider establishing defined contribution plans.

3. The advantages and disadvantages of providing early retirement incentives, commonly referred to as "retirement windows."

4. Any other issue determined necessary for consideration and study by the committee.



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E. The committee shall make recommendations concerning each of the listed study items and submit a report of its findings and recommendations, including proposed legislative changes, to the governor, the president of the senate and the speaker of the house of representatives on or before October 31, 1995.

**Sec. 18. Repeal**

Section 15 of this act is repealed from and after December 31, 1995.



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## Laws of 1997, Chapter 143

### **Sec. 9. Investment advisory council members: retention on ASRS board: initial terms of new ASRS board members**

A. Any member of the investment advisory council who is not a member of the Arizona state retirement system board on the effective date of this act becomes a member of the Arizona state retirement system board on the effective date of this act. The term of a person who becomes a member of the Arizona state retirement system board pursuant to this subsection expires on the same day that the person's term on the investment advisory council would have expired.

B. Notwithstanding section 38-713, Arizona Revised Statutes, as amended by this act:

1. A person who does not meet the membership requirements prescribed by this act may continue to serve until the expiration of the member's normal term.

2. The initial terms of new members of the Arizona state retirement system board are as follows:

(a) The initial term of the new public member expires on the third Monday in January, 1998.

(b) The initial term of the at large member expires on the third Monday in January, 2000.

### **Sec. 10. Delayed effective date**

This act is effective from and after December 31, 1997.

*As amended by Laws 1997 Chapter 143, §§9 and 10, Eff. from and after December 31, 1997.*

## Laws 1997, Chapter 203

### **Section 1. Benefit options for transferred defined contribution program members**

A. If an eligible member who elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2, Arizona Revised Statutes, retires and does not make all contributions under section 38-771, subsection E, Arizona Revised Statutes, because of the limitations of section 38-747, Arizona Revised Statutes, the member is eligible to receive a payment from the member's employer in an amount equal to the employer contributions that have not been paid





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pursuant to section 38-771, subsection E, Arizona Revised Statutes, because of the limitations of section 38-747, Arizona Revised Statutes, plus applicable interest and supplemental credits that would have been paid IF the member and employer contributions had been made. The Arizona state retirement system board shall calculate this amount. The eligible member's employer shall pay the amount prescribed in this subsection in a single payment on the member's retirement.

B. Payment pursuant to subsection A of this section, together with the retirement benefits payable to the member by the Arizona state retirement system, is in full satisfaction of all claims and demands by the eligible member that the eligible member's retirement benefits are less than the amount of retirement benefits payable to the eligible member under the defined contribution program administered by the Arizona state retirement system if the eligible member had remained a member of the defined contribution program administered by the Arizona state retirement system.

## **Sec. 2. Retired system members**

A. If an eligible member who retired after April 16, 1995 but before the effective date of this act elected to receive benefits pursuant to section 38-771, subsection C, paragraph 2, Arizona Revised Statutes, and was not able to make any or all contributions under section 38-771, subsections D and E, Arizona Revised Statutes, because of the limitations of section 38-747, Arizona Revised Statutes, or the member's termination of employment, the eligible member shall receive a payment from the eligible member's employer in an amount equal to the difference between employer contributions made and seven per cent of the member's gross compensation from July 1, 1984 through January 1, 1996, plus applicable interest and supplemental credits that would have been paid if the contributions had been made. The Arizona state retirement system board shall calculate the amount of this difference.

B. In order to receive the payment prescribed pursuant to subsection A of this section, an eligible member shall submit an application for the payment to the eligible member's employer on or before December 31, 1997. On receipt of the application, the eligible member's employer shall pay in a single payment the amount prescribed in subsection A of this section directly to the eligible member.

C. An eligible member shall agree that payment pursuant to subsection B of this section. Together with the retirement benefits payable to the eligible member by the Arizona state retirement system, is in full satisfaction of all claims and demands by the eligible member that the eligible member's retirement benefits are less than the amount of retirement benefits payable to the eligible member under the defined contribution program administered by the Arizona state retirement system if the eligible member had remained a member of the defined contribution program administered by the Arizona state retirement system.



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**Sec. 3. Definition of eligible member**

For the purposes of this act:

1. "Eligible member" means a member who was a member of the defined contribution program administered by the Arizona state retirement system and who was transferred to the defined benefit program established by title 38, chapter 5, article 2, Arizona Revised Statutes, on July 1, 1981.

2. The terms used have the same meaning prescribed in sections 38-711 and 38-771, Arizona Revised Statutes.

**Sec. 4. Delayed repeal**

A. Sections 1 and 3 of this act are repealed from and after December 31, 2002.

B. Section 2 of this act is repealed from and after December 31, 2000.

## **Laws of 1997, Chapter 280**

**Sec. 21. Recalculation of costs of redeemed service: refund**

A. The Arizona state retirement system shall recalculate the cost of redeemed service as provided in this section effective retroactively to the date of redemption of service by a retired member or a deceased retired member whose beneficiary is receiving benefits on account of a deceased retired member of the Arizona state retirement system if the retired member redeemed previously forfeited service pursuant to Laws 1986, chapter 77, section 1 or Laws 1992, chapter 137, section 1.

B. The Arizona state retirement system shall recalculate the cost of redeemed service as provided in this section effective retroactively to the date of redemption of the service by an active member of the Arizona state retirement system if the active member redeemed previously forfeited service pursuant to Laws 1986, chapter 77, section 1 or Laws 1992, chapter 137, section

C. The Arizona state retirement system shall determine the amount a member described in subsection A or B of this section would have paid for the purchase of the member's previously forfeited service if section 38-742, Arizona Revised Statutes, as amended by Laws 1996, chapter 185, section 8, had been in effect at the time of purchase pursuant to Laws 1986, chapter 77, section 1 or Laws 1992, chapter 137, section 1.



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D. The Arizona state retirement system shall subtract the amount determined pursuant to subsection C of this section from the amount the member actually paid pursuant to Laws 1986, chapter 77, section 1 or Laws 1992, chapter 137, section 1. If the remainder is greater than zero and notwithstanding any other law, the Arizona state retirement system shall refund the remainder to the active member, the retired member or the retired member's beneficiary. The Arizona state retirement system shall pay a refund pursuant to this subsection to an active member at the time it makes retirement benefit payments.

E. The Arizona state retirement system shall pay interest on any amounts refunded pursuant to this section. The interest shall be compounded annually at the interest rate assumption approved by the board from time to time for actuarial equivalency.

F. Before retirement, an active member who is entitled to a payment pursuant to subsections D and E of this section may apply the amount of the payment to a purchase of additional service pursuant to section 38-742, 38-743 or 38-745, Arizona Revised Statutes, if the active member is eligible to purchase such service.

## **Sec. 22. Appropriation**

The sum of \$200,500 is appropriated from the Arizona state retirement system administration account to the Arizona state retirement system for fiscal year 1997-1998 for the purpose of defraying the cost of making the recalculations prescribed by section 21 of this act.

## **Sec. 23. Retroactivity**

Section 38-767, Arizona Revised Statutes. As amended by this act applies retroactively to July 1, 1997



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## **Laws 1998, Chapter 264**

### **Sec. 6. Repeal**

Laws 1995, chapter 32, section 26 is repealed.

(Repeals Sunset of ASRS COLA previously scheduled for July 1, 2000.)



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## Laws of 1999, Chapter 66

**Section 1. Laws 1995, chapter 32, section 24 is amended to read:**

**Sec. 24. Savings clause; beneficiary longevity reserve account; definitions**

A. The repeal of sections 38-744, 38-745, 38-746, 38-746.01, 38-747 through 38-752, 38-752.01, 38-753, 38-754, 38-758, 38-759, 38-760, 38-762 through 38-775, 38-777 and 38-778, Arizona Revised Statutes, does not affect the rights and duties of members of the state highway patrol retirement system and the Arizona state retirement system that matured or proceedings that were begun before March 30, 1995.

B. ASRS shall maintain the beneficiary longevity reserve account as a part of its accounts for the purpose of maintaining benefits payable to retired system members as follows:

1. The following amounts shall be credited to the beneficiary longevity reserve account:

(a) Interest attributable to the system that is earned by ASRS in excess of the annual rate of interest adopted by the board.

(b) Actuarial gains experienced in the operation of the system as determined by the actuary employed by the board.

(c) Other available system funds.

2. ASRS shall charge the following amounts to the beneficiary longevity reserve account:

(a) Actuarial losses experienced in the operation of the system as determined by the actuary employed by the board.

(b) Any surplus amounts in the beneficiary longevity reserve account that may be allocated by the board to increase retirement benefits for members pursuant to paragraph 3 of this subsection.

3. The board, after giving due consideration to the recommendation of its actuary, shall determine the amount required in the beneficiary longevity reserve account to maintain benefits payable to retired system members. Any surplus in the beneficiary longevity reserve account in excess of the amount determined by the actuary may be allocated by the board to increase retirement benefits for system members. The portion of the surplus to be allocated with respect to



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retired system members shall bear the same ratio to the total of the surplus as the retirement account reserves applicable to those retired system members bear to the retirement account reserves applicable to all system members, and the balance of the surplus shall be allocated with respect to system members who retire after the allocation. The portion of the surplus to be allocated with respect to retired system members shall be allocated in the ratio that each retired system member's retirement account reserve bears to the total retirement account reserves of all retired system members and shall be used to provide a life income to cease at the retired system member's death in an amount determined by the interest and life expectancy tables applicable on the date of allocation and based on the attained age of the retired system member on that date. The portion of the surplus to be allocated with respect to system members retiring after the allocation shall be allocated in the ratio that the balance in each such system member's retirement account arising from employer contributions bears at the time of allocation to the total of those balances of all those system members and shall be credited as an employer contribution to each such system member's retirement account. The life income or increased amount of retirement benefits may be reduced or eliminated if subsequent experience determines that the account is inadequate to maintain necessary reserves and to pay the life incomes or benefits.

4. Notwithstanding paragraph 3 of this subsection, with respect to retired system members and their beneficiaries receiving retirement benefits, the board may allocate any surplus to those retired system members and their beneficiaries that may arise due to a change in the interest and life expectancy tables that reduced liabilities, other than liabilities for prior service, to maintain benefits payable to those retired system members and their beneficiaries on the date of the change. The surplus shall:

(a) Be applied for each retired system member and retired system member's beneficiary, in the ratio that the retired system member's or retired system member's beneficiary's reserve held in the retirement account bears to the total reserves for all retired system members and their beneficiaries.

(b) Provide income in an amount determined by the interest and life expectancy tables applicable on the date of allocation and based on the attained age of the retired system member or retired system member's beneficiary on that date.

(c) Be payable in a manner that is suitable to the retired system member's or retired system member's beneficiary's method of payment. The income may be reduced or eliminated if subsequent experience determines that the account is inadequate to maintain necessary reserves and to pay the income.

5. A retired system member who has elected an optional form of retirement benefit may elect to receive the retirement benefits provided in paragraph 3 of this subsection in the same



optional form of retirement benefits as the member elected at retirement. If a retired system member elects to receive the benefits provided in paragraph 3 of this subsection in an optional form pursuant to this paragraph, all existing retirement benefits payable to the member pursuant to paragraph 3 of this subsection shall be reannuitized, all future retirement benefits payable to the member pursuant to paragraph 3 of this subsection shall be annuitized and benefits shall be paid to the member or the member's surviving beneficiary based on the optional retirement benefit that the member has elected. The amount of the optional benefits payable pursuant to this paragraph shall be equal to the current actuarial lump sum value of the life income benefits payable to the retired system member under paragraph 3 of this subsection, adjusted actuarially to reflect the benefit payment option and the ages of the retired system member and the member's contingent annuitant, in the case of a joint and survivor annuity option, and the number of years remaining in the original period, in the case of a period certain and life annuity option. the beneficiary of a deceased retired system member who had elected to receive an optional form of retirement benefit pursuant to this paragraph is not eligible for additional benefit increases under paragraph 3 of this section after the death of the retired system member.

E. Notwithstanding section 38-713, Arizona Revised Statutes, as added by this act, all persons serving as members of the Arizona state retirement system board on the effective date of this act may continue to serve until the expiration of their normal terms. The governor shall make all subsequent appointments as prescribed by statute.

F. For the purposes of this section:

1. **"ASRS"** means the Arizona state retirement system established by title 38, chapter 5, article 2, Arizona Revised Statutes.

2. **"Board"** means the ASRS board established in section 38-713, Arizona Revised Statutes.

3. **"Prior service"** means service for this state or a political subdivision of this state before membership in the system.

4. **"Retirement account"** means the combined member and employer contributions with interest or earnings on the contributions including allocations credited as employer contributions pursuant to this section.

5. **"System"** means the defined contribution program administered by ASRS.



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## Laws 1999, Chapter 260

Reference title: retirement; game and fish

### **Section 1. Arizona game and fish department employees; purchase of forfeited credited service with the Arizona state retirement system**

A. Notwithstanding section 38-742, Arizona Revised Statutes, the Arizona state retirement system shall allow employees of the Arizona game and fish department who became eligible to participate in the public safety personnel retirement system before September 15, 1989, who transferred to the public safety personnel retirement system and who received a return of member contributions from the Arizona state retirement system to purchase their forfeited credited service by paying the amount withdrawn plus interest on the amount withdrawn at the rate of three per cent for each year compounded each year from the date of withdrawal to the date of repayment.

B. Upon the reinstatement of the forfeited credited service, the Arizona state retirement system shall, at the request of the employee, transfer service credits of the employees to the public safety personnel retirement system as provided in title 38, chapter 5, article 7, Arizona Revised Statutes.

**NOTE: This chapter was modified by Laws 327 (SB 1083) which contains the following section:**

### **“Sec. 29. Arizona department of agriculture officers; public safety personnel retirement system “**

Notwithstanding sections 38-842 and 38-847, Arizona Revised Statutes, as amended by this act, appropriations to the Arizona department of agriculture shall not include monies for joinder into the public safety personnel retirement system until fiscal year 2001-2002 and the Arizona department of agriculture shall not use or transfer any monies otherwise appropriated to it for joinder into the public safety personnel retirement system until fiscal year 2001-2002. “

## Laws 1999, Chapter 266

**Sec. 4. Laws 1997, chapter 203, section 3 is amended to read:**





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**Sec. 3. Definition of eligible member**

For the purposes of this act laws 1997, chapter 203:

1. **"Eligible member"** means a member who was a member of the defined contribution program administered by the Arizona state retirement system and who was transferred to the defined benefit program established by title 38, chapter 5, article 2, Arizona Revised Statutes, on July 1, 1981. Beginning on July 1, 1999, eligible member does not include a member who is entitled to benefits pursuant to section 38-771.01, Arizona Revised Statutes, as added by this act.

2. The terms used have the same meaning prescribed in sections 38-711 and 38-771, Arizona Revised Statutes.

**Sec. 5. Applicability; prior election void; attorney fees and costs**

A. Section 38-771.01, Arizona Revised Statutes, as added by this act, only provides benefits for members of ASRS or their beneficiaries who are described in section 38-771.01, Arizona Revised Statutes, as added by this act, and who do not elect to opt out of coverage within the class action suit titled James J. Burke v. ASRS, et al., Pima County Cause No. 316479. If a member or beneficiary elects to opt out of coverage under that class action suit, the member or beneficiary is not entitled to any benefits provided pursuant to section 38-771.01, Arizona Revised Statutes, as added by this act, but is entitled to benefits only as provided in section 38-771, Arizona Revised Statutes, and Laws 1997, chapter 203 or as otherwise provided by title 38, chapter 5, article 2, Arizona Revised Statutes.

B. If an eligible member as defined in Laws 1997, chapter 203, section 3, as amended by this act, previously received or elected to receive payment from the member's employer as provided in Laws 1997, chapter 203 and that member is entitled to benefits under section 38-771.01, Arizona Revised Statutes, as added by this act, the member's election to receive the payment is void and of no further force and effect.

C. If a member described in subsection B of this section previously received a payment from the member's employer pursuant to Laws 1997, chapter 203, the member shall return to the employer the gross amount of the payment, undiminished by any federal and state income taxes withheld by the employer from the payment and without interest, on or before December 31, 1999, unless the court in the class action titled James J. Burke v. ASRS, et al., Pima County Cause No. 316479 orders the member not to return all or any portion of the payment based on objective criteria not specific to any one member submitted to the court demonstrating that the member is not financially capable of returning all or a portion of the payment.



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D. If the member obtains an order not to return all or any portion of the payment to the employer, the gross amount of the payment, undiminished by any federal and state income and employment taxes withheld by the employer from the payment, that was previously paid to the member and that is not returned to the employer shall be subtracted by ASRS in computing the amount that ASRS will credit to the member's account pursuant to section 38-771.01, subsection C, Arizona Revised Statutes, as added by this act. Notwithstanding any provision to the contrary in section 38-771.01, Arizona Revised Statutes, as added by this act, if a member described in subsection C of this section does not return the entire payment to the employer on or before July 1, 1999, ASRS shall not recompute the member's account pursuant to section 38-771.01, section C, Arizona Revised Statutes, as added by this act, until the earlier of the date the member repays the payment, the date the member obtains a court order that the amount will not be required to be returned to the employer or December 31, 1999. If the total repayment has not been made by December 31, 1999 and the member has not previously obtained a court order that the repayment is not required, in recomputing the member's account pursuant to section 38-771.01, Arizona Revised Statutes, as added by this act, ASRS shall subtract the unpaid amount from the recomputation until the member repays the payment to the employer. Any amount repaid after December 31, 1999 shall bear interest at eight per cent a year, compounded monthly.

E. The employers whose former or present employees are entitled to benefits under section 38-771.01, Arizona Revised Statutes, as added by this act, shall pay the reasonable attorney fees and costs incurred by the plaintiffs in the class action suit titled James J. Burke v. ASRS, et al., Pima County Cause No. 316479, as may be awarded by the court. The attorney fees and costs shall be prorated among the employers based on the amount each employer is required to contribute to ASRS pursuant to section 38-771.01, Arizona Revised Statutes, as added by this act, as compared to the total amount all such employers are required to contribute to ASRS. ASRS shall compute the amount each employer is required to contribute to ASRS for the attorney fees and costs and inform each employer of the amount of the payment no later than December 31, 1999. Each employer shall pay its portion of the attorney fees and costs to ASRS on or before June 30, 2000. ASRS shall deposit the amounts paid in accounts that are separate from the assets of the defined contribution program administered by ASRS and the defined benefit program established by title 38, chapter 5, article 2, Arizona Revised Statutes. ASRS shall pay the attorney fees and costs from the monies maintained by ASRS in the separate accounts.

F. The terms used in this section have the same meaning prescribed in section 38-711, Arizona Revised Statutes, and section 38-771.01, Arizona Revised Statutes, as added by this act.



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**Sec. 6. Conditional enactment; retroactivity**

A. The effective date of this act shall be the later of the date the Arizona state retirement system receives notification from the United States internal revenue service that the employer contributions required by this act do not exceed the limitations of section 415 of the internal revenue code or the date the judgment entered by the court in the class action titled James J. Burke v. ASRS, et al., Pima County Cause No. 316479 pursuant to the settlement of the parties becomes final. If, for any reason prior to January 1, 2000, the Arizona state retirement system does not receive notification from the United States internal revenue service or the final judgment is not entered by the court, then this act does not become effective. The Arizona state retirement system shall notify the director of the Arizona legislative council of the date on which the condition is met.

B. Notwithstanding the date on which the conditions prescribed in subsection A are met, the provisions of this act that are designated to be effective on July 1, 1999 apply retroactively to July 1, 1999.

**Sec. 7. Appropriation; purpose; exemption from lapsing**

A. The following sums are appropriated from the state general fund to the Arizona state retirement system for distribution to employers for payments required pursuant to this act:

1. For fiscal year 1999-2000, \$600,000 to pay reasonable attorney fees and costs incurred by the plaintiffs in the class action suit titled James J. Burke v. ASRS, et al., Pima County Cause No. 316479, as may be awarded by the court.

2. For fiscal year 2000-2001, \$4,200,000 for settlement payments required pursuant to this act.

3. For fiscal year 2001-2002, \$9,000,000 for settlement payments required pursuant to this act.

B. The appropriation made in subsection A of this section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

**Sec. 8. Appropriation**

A. The sum of \$150,000 is appropriated from the assets of the Arizona state retirement system for the administration of this act.



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B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

**Sec. 9. Reimbursement; general fund**

Employers that are scheduled to receive settlement monies shall report to the joint legislative budget committee and the office of strategic planning and budgeting on or before January 15, 2000 the fund source during the period for which the settlement was made for personal services and employee related expenditures for affected employees. It is the intent of the legislature that the state general fund be reimbursed for the scheduled settlement amounts for employees who are paid from other appropriated and nonappropriated funds. These reimbursements shall be made from future supplemental appropriations.

## **Laws 1999, Chapter 327**

**Sec. 27. Withdrawal of contributions from the Arizona state retirement system**

A. Beginning on January 1, 1999, an employee who transferred from the Arizona state retirement system to an optional retirement program pursuant to section 15-1628, Arizona Revised Statutes, and who was required to leave in the Arizona state retirement system contributions that were made before the transfer may withdraw the employee's contributions to the Arizona state retirement system and an amount equal to the employer contributions paid to the Arizona state retirement system on behalf of the employee plus interest as determined by the Arizona state retirement system board if the employee satisfies any one of the following conditions:

1. The employee has terminated employment by retirement or death.
2. The employee has attained a normal retirement date as defined in section 38-711, Arizona Revised Statutes.
3. If the employee is an active participant in an optional retirement program, the employee elects to transfer the lump sum value of the refunded contributions and interest as determined pursuant to this section to the optional retirement program in which the employee is enrolled pursuant to section 15-1628, Arizona Revised Statutes.

B. The Arizona board of regents shall require that the optional retirement program accept elective transfers pursuant to subsection A, paragraph 3 of this section. Each elective transfer



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shall be divided equally for placement in the employee's account and the employer's account in the optional retirement program.

C. Withdrawal or transfer of contributions with interest pursuant to this section constitutes a withdrawal of the employee's membership in the Arizona state retirement system and a waiver of all benefits under the Arizona state retirement system.

*Originally in SB 1158. Also see Sec. 30. Subsection B, and Sec. 31.*

**Sec. 28. Arizona state retirement system defined benefit retirees; benefit increase**

A member or a member's beneficiary who is receiving a benefit under the Arizona state retirement system defined benefit program established by title 38, chapter 5, article 2, Arizona Revised Statutes, on July 1, 2000 is entitled to receive a one-time permanent increase of five per cent of the member's or beneficiary's monthly benefit amount.

*See Sec. 32 for delayed effective date to July 1, 2000.*

**Sec. 29. Arizona department of agriculture officers; public safety personnel retirement system**

Notwithstanding sections 38-842 and 38-847, Arizona Revised Statutes, as amended by this act, appropriations to the Arizona department of agriculture shall not include monies for joinder into the public safety personnel retirement system until fiscal year 2001-2002 and the Arizona department of agriculture shall not use or transfer any monies otherwise appropriated to it for joinder into the public safety personnel retirement system until fiscal year 2001-2002.

**Sec. 30. Retroactivity**

A. Section 38-797.07, Arizona Revised Statutes, as amended by this act, applies retroactively to from and after June 30, 1996.

B. Section 27 of this act, relating to withdrawal of contributions from the Arizona state retirement system, is effective retroactively to from and after December 31, 1998.

**Sec. 31. Delayed repeal**

Section 27 of this act, relating to withdrawal of contributions from the Arizona state retirement system, is repealed from and after December 31, 2000.



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**Sec. 32. Delayed effective date**

Section 38-757, Arizona Revised Statutes, as amended by this act, and section 28 of this act, relating to benefit increases for Arizona state retirement system defined benefits retirees, are effective from and after June 30, 2000.

## **Laws 1999, Chapter 329**

**Sec. 7. Fiscal analysis**

The joint legislative budget committee may perform a complete fiscal analysis of the defined contribution retirement plan option prescribed by this act. If the joint legislative budget committee performs the fiscal analysis, the joint legislative budget committee shall submit a written report of its findings to the speaker of the house of representatives, the president of the senate and the governor on or before December 1, 2001 and shall provide a copy of this report to the secretary of state and the director of the department of library, archives and public records. The fiscal analysis shall include an evaluation of the impact of the defined contribution retirement plan option on the elected officials' retirement plan, the Arizona state retirement system, the public safety personnel retirement system and the corrections officer retirement plan.

**Sec. 8. Legislative intent**

The legislature intends that the fund manager administer the defined contribution retirement plan option established by title 38, chapter 5, article 8, Arizona Revised Statutes, as added by this act, through contracts with multiple vendors if the fund manager determines that contracts with multiple vendors would be financially prudent.



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## **Laws of 2000, Chapter 341**

### **Section 1. ASRS actuarial computation method legislative study committee**

A. An Arizona state retirement system actuarial computation method legislative study committee is established consisting of the following members:

1. Three members of the house of representatives who are appointed by the speaker of the house of representatives, not more than two of whom represent the same political party. The speaker of the house of representatives shall designate one of these members to serve as cochairperson of the study committee.

2. Three members of the senate who are appointed by the president of the senate, not more than two of whom represent the same political party. The president of the senate shall designate one of these members to serve as cochairperson of the study committee.

3. One member who represents the state and who is appointed by the governor.

4. One member who represents a county and who is appointed by the speaker of the house of representatives.

5. One member who represents a city and who is appointed by the president of the senate.

6. One member who represents a school district and who is appointed by the speaker of the house of representatives.

7. One member who is a retired member of the Arizona state retirement system and who is appointed by the president of the senate.

8. The director of the Arizona state retirement system or the director's designee.

B. The study committee shall:

1. Examine and compare actuarial computation methods that may be appropriate for the Arizona state retirement system, including the entry age normal cost method and the projected unit credit method.

2. On or before December 1, 2000, submit a written report to the speaker of the house of representatives, the president of the senate and the governor that includes the study committee's



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findings and recommendations relating to the actuarial computation methods examined. If the study committee recommends a change in the actuarial computation method used by the Arizona state retirement system, the report shall include the length of the phase-in, if any, of the recommended actuarial computation method and the length of the funding period to be used under the recommended actuarial computation method. The report shall include fiscal impacts of the alternatives examined by the study committee. The study committee shall submit a copy of the report to the secretary of state and the director of the department of library, archives and public records.

C. Legislative staff and staff of the Arizona state retirement system shall provide services to the study committee as the study committee deems necessary.

**Sec. 2. Delayed repeal**

Section 1 of this act, relating to the Arizona state retirement system actuarial computation method legislative study committee, is repealed from and after December 31, 2000.





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## **Laws of 2001, Chapter 280**

### **Sec.10. Termination of the tax deferred annuity and deferred compensation pilot program**

This act terminates the pilot program option for legislative employees and state elected officials to elect to participate in a tax deferred annuity and deferred compensation program pursuant to title 38, chapter 5, Article 5, Arizona Revised Statutes, in lieu of participation in the Arizona state retirement system pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes. All legislative employees and state elected officials who elected on or before the effective date of this act to participate in a deferred tax annuity and deferred compensation program in lieu of participation in the Arizona state retirement system shall continue to participate in that option pursuant to the irrevocable election made by the employee or state elected official and the employer shall continue to pay an amount equal to five per cent of the employee's or state elected official's base salary directly to the program in lieu of employer contributions to a public retirement system.

### **Sec.11. Termination of the defined contribution retirement plan option pilot program**

This act terminates the pilot program option for certain exempt state officers or employees and state elected officials who are subject to term limits to elect to participate in a defined contribution retirement plan option in lieu of participation in their respective state defined benefit retirement plans. All exempt state officers or employees and state elected officials who are subject to term limits and who elected on or before the effective date of this act to participate in the defined contribution retirement plan option established by Laws 1999, chapter 329, section 6 shall continue to participate in that option pursuant to the irrevocable election made by the exempt state officer or employee or state elected official who is subject to term limits and the employer shall continue to contribute to each participating state elected official's or exempt state officer's or employee's account an amount equal to two and sixty-six hundredths per cent of the state elected official's or exempt state officer's or employee's gross salary.

## **Laws of 2001, Chapter 376**

### **Sec. 5. Retroactivity**

This act applies retroactively to from and after June 30, 2001.



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**Sec. 6. Appropriation: purpose: exemption**

The sum of \$698,000 is appropriated from the Arizona state retirement system administration account in fiscal year 2001-2002 to the Arizona state retirement system for the administrative implementation of this act.

## **Laws of 2001, Chapter 380**

**Sec. 16. Termination of the tax deferred annuity and deferred compensation pilot program**

This act terminates the pilot program option for legislative employees and state elected officials to elect to participate in a tax deferred annuity and deferred compensation program pursuant to title 38, chapter 5, article 5, Arizona Revised Statutes, in lieu of participation in the Arizona state retirement system pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes. All legislative employees and state elected officials who elected on or before the effective date of this act to participate in a deferred tax annuity and deferred compensation program in lieu of participation in the Arizona state retirement system shall continue to participate in that option pursuant to the irrevocable election made by the employee or state elected official and the employer shall continue to pay an amount equal to five per cent of the employee's or state elected official's base salary directly to the program in lieu of employer contributions to a public retirement system.

**Sec.17. Termination of the defined contribution retirement plan option pilot program**

This act terminates the pilot program option for certain exempt state officers or employees and state elected officials who are subject to term limits to elect to participate in a defined contribution retirement plan option in lieu of participation in their respective state defined benefit retirement plans. All exempt state officers or employees and state elected officials who are subject to term limits and who elected on or before the effective date of this act to participate in the defined contribution retirement plan option established by Laws 1999, chapter 329, section 6 shall continue to participate in that option pursuant to the irrevocable election made by the exempt state officer or employee or state elected official who is subject to term limits and the employer shall continue to contribute to each participating state elected official's or exempt state officer's or employee's account an amount equal to two and sixty-six hundredths per cent of the state elected official's or exempt state officer's or employee's gross salary.



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**Sec. 18. Appropriation; purpose**

The sum of \$2,613,700 is appropriated from the Arizona state retirement system administration account in fiscal year 2001-2002 to the Arizona state retirement system for the administrative implementation of this act.

**Sec. 19. Conditional enactment**

Section 12 of this act is not effective unless senate bill 1129, section 2, forty-fifth legislature, first regular session, relating to retirement benefits, is enacted into law.

## **Laws of 2001, Chapter 383**

**Sec. 5. Appropriation; purpose; exemption**

A. The sum of \$524,000 is appropriated from the state retirement fund in fiscal year 2001-2002 to the Arizona state retirement system for the purposes provided in this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, except that all monies remaining unencumbered or unexpended on June 30, 2003 revert to the state retirement fund."

**Sec. 6. Retroactivity**

This act applies retroactively to from and after June 30, 2001.